

## National Minimum Wage

The following notes bring the guide up to date in respect of the items shown.

### Rates for the national minimum wage

The current rate for workers aged 22 or over is £4.50 per hour. For workers aged 18-21 inclusive the rate is £3.80 per hour. Workers aged 22 or over who are starting a new job with a new employer and receiving accredited training must be paid a development rate of at least £3.80 per hour for the first six months and £4.50 thereafter.

From October 2004 the minimum wage rates are set to increase again, although the actual rates will not finally be confirmed until end February 2004. The provisional rates are £4.85 per hour for workers aged 22 or over and £4.10 per hour for workers aged 18-21 inclusive. The development rate will also increase to £4.10 per hour.

### National Minimum Wage (Enforcement Notices) Act

On 16 April 2003, the Court of Appeal upheld the decision of an Employment Appeals Tribunal that the Inland Revenue did not have the power to issue National Minimum Wage Enforcement Notices for workers who have left their employment. However, the Government has now successfully brought forward legislation to ensure that enforcement notices can once more be issued on behalf of former workers. This legislation will come into force in July 2003. All workers, whether they are current or former workers, who believe they have been paid below the minimum wage should continue to contact the Inland Revenue's minimum wage help line on 0845-6000-678.

### Sleeping time at work

The Government is aware that there has been some uncertainty on the issue of "sleeping time" following some recent tribunal decisions (see section 138 of guide). We believe the position to be as follows. Provided the employment contract clearly sets out the period when the worker is permitted to sleep and the employer provides suitable sleeping facilities, the worker need not be paid the national minimum wage in respect of that period if he is not actually working. He must, however, be paid the minimum wage in respect of any time during the period when he is working or awake for the purpose of working. In cases where the employment contract does not clearly specify any sleeping time however, tribunals seem likely to conclude that the minimum wage should be paid for the full time when the worker is at work.

### Accommodation offset

The maximum amount that can be offset against the national minimum wage in respect of the provision of accommodation is £24.50 per week (£3.50 per day). Where accommodation is provided for less than a full week, the offset should be correspondingly reduced. The offset will increase to £26.25 from 1 October 2004

February 2004

# A detailed guide to the national minimum wage

Confidential NMW helpline  
0845 6000 678

The helpline numbers should be used if you have any questions regarding the national minimum wage as well as when you wish to make a confidential complaint about non payment.



Department of Trade and Industry

## The main changes to the national minimum wage

On 1 October 2001 the main rate of the national minimum wage was raised to £4.10 an hour, from £3.70 an hour. There will be a further increase to £4.20 an hour on 1 October 2002, subject to the economic conditions at the time. The main rate applies from a worker's 22nd birthday.

On 1 October 2001 the development rate of the national minimum wage for workers aged 18 to 21 (inclusive) was raised to £3.50 an hour, from £3.20 an hour. There will be a further increase to £3.60 an hour on 1 October 2002, subject to the economic conditions at the time.

The development rate for workers aged 22 years and over who are starting a new job with a new employer and doing accredited training (see Chapter 5 for definition of accredited training) was raised to £3.50 an hour on 1 October 2001, from £3.20 an hour. This rate can only be paid for the first six months of the new job.

On 1 October 2001 the maximum amount which can be offset for accommodation was increased to a maximum of £3.25 per day (or 57p an hour), from £2.85 per day (or 50p an hour).

In addition to these rate increases a change to the regulations involving the definition of accredited training for national minimum wage purposes also came into effect on 1 October.

It is important to note that these new rates only apply to pay reference periods (see Chapter 6) beginning on or after the date they came in to law.

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# 1 Introduction

## Aim of the guidance

1. This booklet provides guidance on workers' rights and employers' obligations under the National Minimum Wage Act 1998 and the subsequent secondary legislation, especially the National Minimum Wage Regulations 1999, the National Minimum Wage Regulations 1999 (Amendment) Regulations 2000 and the National Minimum Wage Regulations 1999 (Amendment)(No.2) Regulations 2001. Its aim is to help employers ensure that they pay their workers at least the national minimum wage, and to help workers establish that they are getting what they are entitled to.

2. This chapter summarises the things that workers and employers need to know about their rights. Chapters 2 to 16 explain how the rules work, including: who is entitled to the national minimum wage; how much it is; the hours for which it must be paid; and how to calculate whether someone's pay is in line with the national minimum wage. Chapter 17 explains what records need to be kept by employers. Chapter 18 offers a message for telling people about the national minimum wage and Chapter 19 looks at how the national minimum wage will be enforced. Chapter 20 lists the most frequently asked questions about the national minimum wage and Chapter 21 contains contact details for further information.

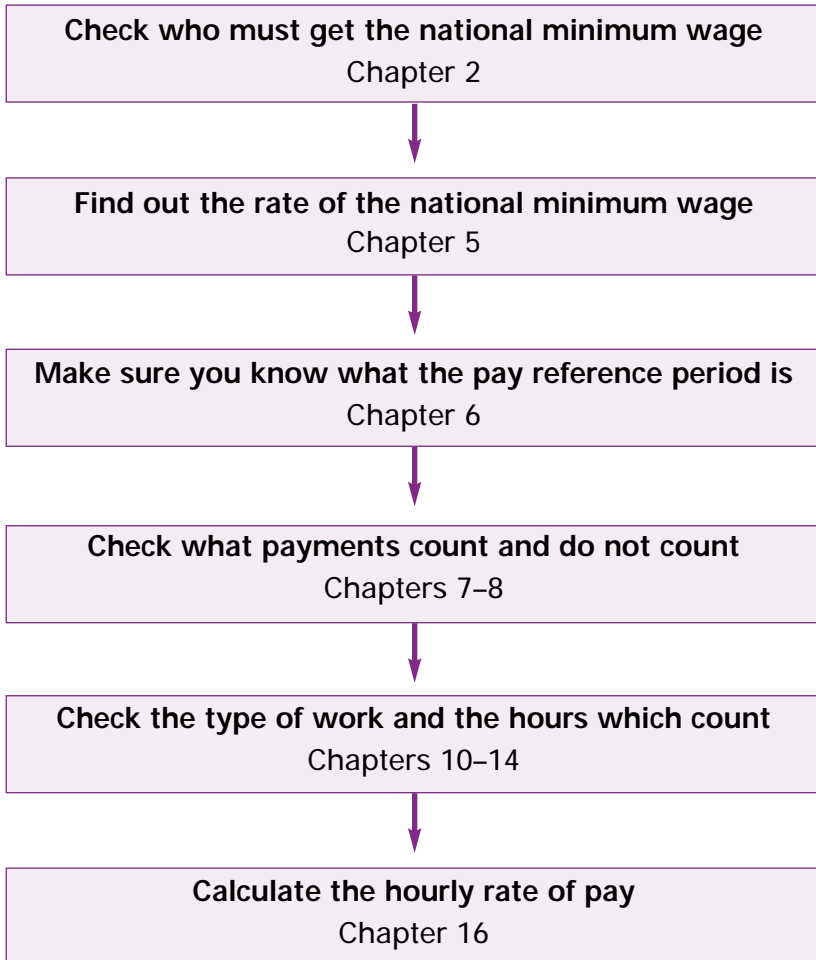
**3. The information contained in this booklet gives only general guidance and should not be regarded or relied upon as a complete and authoritative statement of the law. The examples and boxed information are for illustrative purposes only and should not be regarded as definitive. Where we have shown examples of calculations we have given figures rounded to three**

**decimal places but have made any further calculations on the actual product of the relevant equations. Where figures illustrate payments (or underpayments) we have rounded to the nearest penny. To keep this document as concise as possible, we have used ‘he’ and ‘his’ to refer to both male and female workers and employers.**

4. Further assistance may be obtained by telephoning the confidential national minimum wage helpline on **0845 6000 678** or certain other specific information lines listed in Chapter 21. The DTI has also introduced an on-line interactive guidance site for the national minimum wage. This can be found at **[www.tiger.gov.uk](http://www.tiger.gov.uk)**

## Using the guidance to check pay against the national minimum wage

5. To check whether someone's pay is in line with the national minimum wage, you can step through the guidance as follows:



## Things that employers need to know

6. Employers should note that:
- they are required by law to ensure that their workers are paid at least the national minimum wage;
  - they will need to keep records sufficient to prove that they are paying the national minimum wage to their workers;
  - they may be required by the worker, by an Inland Revenue compliance officer, by an employment tribunal or by a civil court to produce evidence that they have paid the national minimum wage;
  - if they fail to produce records to a worker on request, he may complain to an employment tribunal which can impose a penalty;
  - where a tribunal or civil court is making a decision on a minimum wage case, the burden will always be on the employer to prove that the national minimum wage has been paid;
  - where an employer has failed to pay the national minimum wage, he can be required to pay arrears through the issuing of an enforcement notice;
  - if the enforcement notice is not complied with, compliance officers have the power to issue a penalty notice against the employer;
  - it is a criminal offence to refuse to pay the national minimum wage, to obstruct compliance officers or not to keep proper records (see also paragraph 233). Fines for these offences can be up to £5,000.

7. It is against the law to dismiss or victimise a worker because of the national minimum wage. If a worker is dismissed because he is going to get the national minimum wage or a higher rate of the national minimum wage, this will be an unfair dismissal.

### Things that workers need to know

8. Workers should note that:

- if they believe they are not getting the national minimum wage, they can see their records which their employer must hold;
- if they want to complain that their employer has not paid the national minimum wage or has not allowed them to see their records, they can make a complaint in confidence to the NMW helpline, or take their case to an employment tribunal or civil court independently;
- they are legally protected against being sacked or victimised because of their right to the national minimum wage or because they have complained about non-payment.

9. An employer may not force, or persuade, any worker to agree to a wage below the national minimum wage. The law prevents workers from signing away their right to the national minimum wage.

## 2 Who must get the national minimum wage?

### Workers

10. Most adult workers in the United Kingdom must be paid at least the national minimum wage. If you have a contract of employment you are a worker. Even if you do not have a contract of employment, you are a worker if you are doing work personally for someone else (under a “worker’s” contract) and you are not genuinely self-employed. The contract does not need to be written; it may be an implied contract or an oral contract. People such as home workers, agency workers, casual labourers, part-time workers and workers on short-term contracts are all entitled to the national minimum wage. It does not matter how a worker is paid – by the month, week, day, session, hour or some other way.

### Agency workers

11. If someone is supplied by an agent or agency to do work for somebody else, he will count as a worker and must receive at least the national minimum wage. In most cases it will be clear who the contract is with: the agency itself or the agency’s client to whom the worker is supplied. But sometimes this may be unclear. In such cases, the agency worker will still be entitled to the national minimum wage and the employer is whoever pays him.

### Agricultural workers

12. The rules apply to agricultural workers, who are also covered by the agricultural minimum wage. No agricultural worker may be paid less than the national minimum wage. Some agricultural workers must be paid more than the national minimum wage because there is a higher agricultural minimum wage. (See also Chapter 15.)

## Home workers

13. Homeworkers are entitled to the national minimum wage unless they are running their own business.

**If a homeworker is over 18 years of age and is working for another person or company they are probably entitled to the NMW even if the supplier of the homework tells them that they are self employed.**

The national minimum wage must be paid to workers who work at home as well as to those who work at their employer's premises or elsewhere away from home. Home workers must receive at least the national minimum wage even if they pass some of the work to others such as close friends or family.

Many homeworkers are paid according to the amount of work they complete. If they are paid according to their output (i.e. by piece rates) their employer will need either to:

- Come to a 'fair estimate agreement' about the hours they will work (see Chapter 13 of this guide), or
- Pay the worker the national minimum wage for every hour they actually work.
- Homeworkers should not simply rely on their tax status, a person who has been assessed as 'self-employed' by the Inland Revenue for tax purposes may not necessarily be self-employed for the purposes of national minimum wage. If they are unsure they should contact the helpline on 0845 6000 678 who will be able to help them.

## Piece workers

14. Piece workers are paid by the number of things they produce rather than the number of hours they work. Some piece workers work at home. Other piece workers work in

factories. Piece workers must be paid at least the national minimum wage and there are special rules for working this out (see Chapter 13).

### **Commission workers**

15. Some workers are paid entirely or partly on the basis of sales made or deals completed. These “commission workers” must also be paid at least the national minimum wage (see Chapter 13).

### **Disabled workers**

16. The entitlement to the national minimum wage applies to all workers regardless of individual levels of ability, productivity or effectiveness. So if a disabled person is a ‘worker’ (see paragraph 10) then they must be paid at least the national minimum wage. But some disabled people undertake work-related activities for therapeutic reasons. Where these people are undertaking a purely therapeutic activity with no contractual obligation to work or right to any payment or other reward, they will not count as workers and will not be entitled to the national minimum wage.

The DTI has produced an information note “The Minimum Wage and Therapeutic Work” which can be obtained from the DTI publications orderline tel: 0870 1502 500.

### **Seafarers**

17. Most seafarers working on board a ship registered in the United Kingdom must be paid at least the national minimum wage even if they work for long periods outside the United Kingdom. But a seaman need not be paid the national minimum wage if all his work takes place outside the United Kingdom or (while he is working outside the UK) if he is not normally resident in the United Kingdom, even if he is on a British-registered ship.

## **Offshore workers**

18. Offshore workers must be paid at least the national minimum wage if they work in United Kingdom territorial waters, in the United Kingdom sector of the continental shelf or the foreign sector of a cross-boundary petroleum field which is partly in the United Kingdom sector. Offshore workers are entitled to the national minimum wage whether or not they, or their employer, are based in the United Kingdom itself.

## **Workers from outside the United Kingdom**

19. All workers who work in the United Kingdom must be paid at least the national minimum wage for the hours they work in this country. Foreign workers working in the United Kingdom are entitled to the national minimum wage in exactly the same way as any other worker, regardless of how long or short their stay may be. It does not matter whether their employer is based in the United Kingdom or in another country.

## **British workers working outside the United Kingdom**

20. British workers who usually work in the United Kingdom but who are working temporarily outside the United Kingdom must be paid at least the national minimum wage. The situation for any particular worker will depend on his individual arrangements and the terms of his contract. But if a British worker works overseas for the majority of the time, then he does not need to be paid the UK minimum wage for the overseas work. He is likely, however, to be covered by the employment rules in the countries where he works.

### 3 Who need not get the national minimum wage?

#### The self-employed

21. The national minimum wage does not apply to the genuinely self-employed. In most cases it is easy to distinguish between someone who is self-employed and someone who is a “worker”. If a person is self-employed they probably agree a price for the job with the customer in advance and are paid by an invoice or a bill at the end. They control their own time, and decide whether or not to take each job. They provide their own equipment, and keep the profit they make or bear any loss themselves.

Sometimes it is not easy to tell if a person is really self-employed. For example, if they are paid ‘commission-only’ they may control their own time and keep a share of any profits they make, but they may not be genuinely self-employed if it is not them but someone else (their employer) who has to bear any losses that are made.

They should not simply rely on their tax status, a person who has been assessed as ‘self-employed’ by the Inland Revenue for tax purposes may not necessarily be self-employed for the purposes of national minimum wage. If they are unsure they should contact the helpline on 0845 6000 678 who will be able to help them.

If a dispute goes to court, the tribunal will look at all the facts – such as those described above.

It is important to note that the law on the national minimum wage reverses the burden of proof, so it will always be for an alleged employer to prove that he does not employ any person who he claims is self-employed.

## Most company directors

22. The national minimum wage does not apply to company directors unless they have contracts which make them ‘workers’. Company directors are classed as ‘office holders’ in common law and can do work and be paid for it in that capacity. This is true no matter what sort of work is done or how it is rewarded. So, it is unlikely that a director will have an implied contract which makes him a worker. However, company directors who have employment contracts will need to be paid the national minimum wage. If a company director is unsure whether he has entered into an employment contract with his company he may wish to take legal advice.

## Workers under 18 years old

23. The national minimum wage does not need to be paid to young people aged under 18.

## Some apprentices

24. The national minimum wage does not need to be paid to “apprentices” who are under the age of 19 (to check who counts as an “apprentice”, see paragraphs 26–30 below). So, those who start apprenticeships at age 16 or 17 and continue at age 18 will not need to be paid the national minimum wage until they reach their 19th birthday, when they will qualify for the £3.50 rate (see Chapter 5).

However if their apprenticeship ends before their 19th birthday then they will qualify for the £3.50 rate from that date.

25. Apprentices aged under 26 who are in the first 12 months of their apprenticeship do not need to be paid the national minimum wage. For example, someone starting an apprenticeship just before his 19th birthday would not need to be paid the national minimum wage until just before his 20th birthday. If an apprentice becomes 26 during the first year of

his apprenticeship, he will be entitled to the £4.10 rate from his birthday (see Chapter 5).

26. People who start an apprenticeship at age 26 or above must be paid the national minimum wage.

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Example 1: Apprentice starting at age 16

A young worker starts a four-year apprenticeship at 16 years old. The national minimum wage does not apply for the first two years of the apprenticeship because 16- and 17-year-olds are exempt. At 18 years of age, in the third year of the apprenticeship, he would normally be entitled to the national minimum wage but he does not need to be paid the national minimum wage if he is still an apprentice. It is not until the fourth year of the apprenticeship, when reaching the age of 19, that the apprentice must be paid at least the hourly rate of £3.50

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27. Apprentices as far as the national minimum wage is concerned are either:

- workers who have contracts of apprenticeship; or
- workers who are taking part in the specific Government training programmes known as National Traineeships (England and Wales), Skillseekers – to SVQ level 2 or 3 (Scotland), Jobskills Traineeships (Northern Ireland) or Modern Apprenticeships – including ‘Foundation’ and ‘Advanced’ Modern Apprenticeships (anywhere in UK).

28. Some trainees who take part in these schemes are not employed. These individuals are not treated as apprentices and are not entitled to the national minimum wage.

### Contracts of apprenticeship

29. A contract of apprenticeship was recently defined by the Court of Appeal as “a contract in which a master undertakes to educate and train the apprentice in the practical and other skills

needed to practise a skilled trade (or profession) and the apprentice binds himself to serve and work for the master and comply with all reasonable directions”. Generally speaking, it will be a written contract which should specify the rights and obligations of both the employer and the apprentice; what training is to be provided and to what level; the length of the apprenticeship and the rates of pay. But in the event of a dispute as to whether any particular contract is a “contract of apprenticeship”, it must ultimately be a matter for the courts or tribunals to decide.

### Training schemes to be treated like apprenticeships

30. Modern Apprenticeships (including ‘Foundation’ and ‘Advanced’ Modern Apprenticeships) and National Traineeships in England and Wales are programmes funded by the Department for Education and Employment (DfEE). The programmes are managed through the Training and Enterprise Councils (TECs). In Scotland and Northern Ireland the Scottish and Northern Ireland Offices fund equivalent programmes which as well as ‘Modern Apprenticeship’ are also called, ‘Skillseekers’ and ‘Jobskills traineeships’ respectively.

31. These schemes involve work-based training leading to National Vocational Qualification (NVQ) Level 2 or 3 (Scottish Vocational Qualification Level 2 or 3 in Scotland). They normally last for two or three years. Trainees on these courses should normally have written agreements or contracts with their employer. These should be agreed by a representative of the funding body or Department (for example, the local TEC in England and Wales). Further details of the programmes and how to apply are available from:

### 3: Who need not get the national minimum wage?

For people in England and Wales: local TECs.

For people in Scotland: the Careers Service; the Local Enterprise Companies and the relevant National Training Organisation.

For people in Northern Ireland:

Training & Employment Agency

Adelaide House

39–49 Adelaide Street

Belfast

BT2 8FD

Tel: 02890 257777

### Some other trainees on Government-funded schemes

32. The national minimum wage only needs to be paid to trainees for activities carried out on Government-funded training programmes if they are employed by the employer with whom they are placed under the scheme. This means, trainees, (other than those listed above) aged 18 and above will have to be paid the national minimum wage if they are entitled to receive wages from the employer in return for their work.

33. The names and exact nature of these schemes are subject to change. The main current schemes include:

#### Box 1: Government-funded schemes: England and Wales

- New Deal for the young unemployed
- New Deal for those aged 25 and above
- Work Based Learning for Adults
- Other Youth training
- “Work Trials” scheme

### Box 2: Government-funded schemes: Scotland

- New Deal for the young unemployed
- New Deal for those aged 25 and above
- Training for work
- Skillseekers (who are not pursuing an SVQ level 2 or 3)

### Box 3: Government-funded schemes: Northern Ireland

- New Deal for the young unemployed
- New Deal for those aged 25 and above
- Enterprise Ulster and the Community Work Programme Pilot
- Other youth training

## Some trainees on programmes supported by the European Social Fund

34. The European Social Fund provides assistance to a wide range of Governmental, regional and local training schemes. Trainees taking part in schemes that receive funding from the European Social Fund only need to be paid the national minimum wage if they have a contract of employment with their employer.

## Students doing work experience as part of a higher education course

35. Students who are studying on higher education courses at UK universities or colleges are sometimes placed with an employer as part of their course. Such students need not be paid the national minimum wage for the work that they do while with the employer, up to a maximum period of one year. Of course, most students are not placed with employers as part of their course. The national minimum wage is not relevant to them unless they get a job outside their studies, in which case

### 3: Who need not get the national minimum wage?

the minimum wage applies in the same way as it does to other workers.

36. Students aged 18 and above who are taking a “gap” year between school and higher education must be paid at least the national minimum wage for any work they do.

#### **People living and working within the family**

37. People who live as part of a family (but who are not members of the family) and who share in the work and leisure activities of the household do not need to be paid the national minimum wage. This may apply, for example, to workers such as au pairs, nannies and companions, who live in the house and are provided with accommodation and are treated as a member of the family. Living as part of the family means, in particular, sharing in tasks and leisure activities on the same basis as other family members.

38. The national minimum wage does not need to be paid to family members living at home who help out with household chores. Neither does it need to be paid to workers who participate in the family business, so long as they are members of their employer’s family and share his home.

#### **Friends and neighbours**

39. The national minimum wage does not need to be paid when jobs are done under informal arrangements between people. For example, someone who helps out a neighbour by doing the shopping – and who receives a token payment in return – cannot claim the national minimum wage unless there is a binding contract. Similarly, someone who cleans a friend’s or neighbour’s car on this basis cannot claim the national minimum wage.

### **Members of the armed forces**

40. The national minimum wage does not apply to members of the armed forces, including reservists when they are serving. But civilians in an association of reservists, or civilians working for the Ministry of Defence must be paid at least the national minimum wage.

### **Share fishermen**

41. Share fishermen are fishermen who do not receive a fixed wage or salary but who agree among themselves to divide up the proceeds or profits from a catch. The national minimum wage does not apply to share fishermen.

### **Prisoners**

42. A prisoner working under prison rules is not entitled to be paid the national minimum wage.

## Voluntary workers

43. Volunteers (who provide their time and effort completely freely) need not be paid the national minimum wage because they do not have any contractual arrangement and therefore are not classed as workers. But some people who consider themselves “volunteers” could still potentially count as “workers” because they receive some sort of payment or benefit in kind. These workers need not be paid the national minimum wage if:

- they work for a charity, voluntary organisation, charity shop, school, hospital or similar body; and they receive only reasonable expenses, relevant training and/or subsistence (but not money for subsistence). Regular payments are likely to give the volunteer the right to the national minimum wage. However, a genuine “honorarium” in the form of a gift with no obligation and of a reasonable amount is not likely to give the volunteer the right to the national minimum wage; or
- they are placed by a charity or similar body with another charity or similar body and they also receive money for subsistence: for example, voluntary workers who have been placed with a hospital or charitable care home by a charity which specialises in such placements, and who are provided with some money to cover living expenses.

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### Example 2: Voluntary workers

1. A member of a charity who helps out from time to time at jumble sales for no pay and under no obligation is not entitled to the national minimum wage. He does not have any form of contract and does not count as a “worker”.
  2. A worker for a community group who has set hours and is paid a wage is entitled to the national minimum wage. He fits the definition of a worker and whether the employer in such cases is a charity or voluntary organisation is irrelevant.
  3. A volunteer worker in a hostel with charitable status who receives free accommodation and food as well as expenses for any travel undertaken as part of the job, but who does not receive any monetary payments, is not entitled to the national minimum wage.
  4. The volunteer who works in a hostel but who receives cash payments such as a regular wage is likely to be entitled to the national minimum wage.
- 

### Religious and other communities

44. A residential member of a community does not qualify for the national minimum wage in respect of employment by the community, providing that:-

- the community is a charity or is established by a charity.
- that a purpose of the community is to practice or advance a belief of a religious or similar nature, and
- all or some of its members live together for that purpose.

This does not apply to a community which is an independent school or provides a course of further or higher education.

## 4 Who must pay the national minimum wage?

### Who is the employer?

45. In general, a worker's employer will be obvious – the person with whom the worker has a contract and who pays his wages.

46. The situation may be less clear for temporary workers supplied by an agency. Sometimes there will be a contract which states whether the employer is the agency or the client to whom the worker is supplied. If there is no such contract, the employer is whoever is responsible for paying the worker. If neither the agency nor the client accepts responsibility, the employer is whoever actually pays the worker.

47. Sometimes a worker is employed by another worker, for example, a supervisor engaged to work for a contractor. If the work is done on the contractor's premises, then both the supervisor and the contractor count as the worker's employer.

## 5 The national minimum wage rate

### The standard £4.10 rate of the national minimum wage

48. On 1 October 2001 the standard minimum rate changed to £4.10 an hour for workers aged 22 and over (except people doing accredited training, see paragraph 53). This rate will apply in most cases.

### The £3.50 rate for 18–21-year-olds

49. On 1 October 2001 the development rate for young workers changed to a minimum of £3.50 an hour for workers aged 18–21.

### The £3.50 rate for people doing accredited training

50. There is an accredited training rate of a minimum £3.50 an hour for workers aged 22 years and over who are starting a new job with a new employer and doing accredited training (explained in paragraph 53 below). This rate can be paid only for the first six months of the new job, after which the worker must get at least the standard minimum rate of £4.10 an hour.

### When and how the rates apply

51. It makes no difference how a worker is paid (monthly, weekly, daily, hourly, by session). The national minimum wage still applies.

52. Employers and workers need to know when the different rates apply. For example, at age 21 a worker is entitled to the minimum hourly rate of £3.50; but on reaching his 22nd birthday he becomes entitled to the standard minimum hourly rate of £4.10. The entitlement begins from the birthday itself, though an employer may find it easier to increase the wage for the whole of the pay reference period which contains the birthday.

53. Since the £3.50 youth rate of the national minimum wage is dependent solely on age, employers may want to ask workers to provide proof of their age.

### Accredited training justifying the £3.50 rate

54. The £3.50 accredited training rate applies for no longer than the first six months during which a worker aged 22 or more is doing accredited training in a new job with a new employer. It can only be paid when the employer and worker have a written agreement. The agreement must specify that the worker will take part in a course of accredited training on at least 26 days during the first six months of employment. Employers must keep a copy of the agreement for three years and be able to produce it on request. Training does not have to be for a full 26 days but it must be received on at least 26 days within the six-month period. Participation at an accredited training course may be at or away from the workplace but must be during normal working hours.

55. “Accredited training” means the following in each part of the United Kingdom:

#### Box 4: Accredited training: England and Wales

1. A course which prepares a student to obtain a vocational qualification which, immediately before 1 April 2001, was, or fell within a class, approved by the Secretary of State for Education under Schedule 2(a) to the Further and Higher Education Act 1992; or leads to an external qualification approved under section 98 or 99 of the Learning and Skills Act 2000 for the purposes of section 97 of that Act. These are courses which lead to any National Vocational Qualification (NVQ); or to any General National Vocational Qualification (GNVQ); or to other vocational qualifications specified in published lists. The list for use in England and Wales is available on the internet at [www.dfee.gov.uk/schedule2a](http://www.dfee.gov.uk/schedule2a). Those without internet access, may obtain a print-out of this list from the NMW helpline on 0845 6000 678.

2. In-house company training which has been certified as including at least 50 per cent of the requirements in terms of whole units of one or more National Vocational Qualifications by the awarding body, National Training Organisation or similar suitably qualified independent organisation.

3. For workers aged 22 or more who are participating in the New Deal programme for 18–24-year-olds and who receive a wage (see paragraph 32), accredited training also includes the following courses:

- a course leading to GCSE or A level;
- an “access” course for entry to a course of higher education;
- an “access” course for entry to other specified courses;
- a course for basic literacy in English;
- a course to improve knowledge of English for those for whom English is not the language spoken at home;
- a basic mathematics course;
- in relation to Wales, a course for proficiency or literacy in Welsh;
- a course in independent living and communication for those with learning difficulties, which prepares them for entry to the other courses above.

For enquiries about accredited training courses and New Deal participants, contact the New Deal Helpline, tel: 0845 606 2626.

### Box 5: Accredited training: Scotland

1. A course or programme to obtain a vocational qualification. Such qualifications are a Scottish Vocational Qualification (SVQ); a General Scottish Vocational Qualification (GSVQ); or other vocational qualification accredited or awarded by the Scottish Qualifications Authority (SQA). Further information about qualifications which count as accredited training for workers in Scotland can be obtained from:

The Scottish Qualifications Authority  
Hanover House  
24 Douglas Street  
Glasgow  
G2 7NQ  
Tel: 0141 242 2214

2. In-house company training which has been certified by the Scottish Qualifications Authority as including at least 50 per cent of the requirements of one or more Scottish Vocational Qualifications.

3. For workers aged 22 or more who are participating in the New Deal programme for 18–24-year-olds and who receive a wage (see paragraph 32), accredited training also includes a programme of learning which:

- prepares a person for a vocational qualification;
- prepares a person for a qualification awarded or accredited by the Scottish Qualifications Authority;
- provides instruction for persons participating in the above categories who have a learning difficulty;
- prepares a person for access to higher education;
- is designed to assist persons whose first language is not English to achieve any level of competence in English language.

For enquiries about accredited training courses and New Deal participants, contact The Scottish Qualifications Authority, tel: 0141 242 2214

### Box 6: Accredited training: Northern Ireland

1. A course which prepares a student to obtain a vocational qualification which, immediately before 1 April 2000, was, or fell within a class approved by the Secretary of State for Education under Schedule 2(a) to the Further and Higher Education Act 1992; or leads to an external qualification approved under section 98 or 99 of the Learning and Skills Act 2000 for the purposes of section 97 of that Act. Such qualifications are a National Vocational Qualification (NVQ); a General National Vocational Qualification (GNVQ); or other vocational qualifications accredited by nationally recognised awarding bodies and approved by the Department of Economic Development (acting through the Training and Employment Agency). Enquiries about the courses that count as accredited training for workers in Northern Ireland should be made to:

Training & Employment Agency  
Adelaide House  
39–49 Adelaide Street  
Belfast  
BT2 8FD  
Tel: 02890 257777

2. Company training which has been certified as including at least 50 per cent of the requirements of one or more National Vocational Qualifications by an awarding body.

3. For workers aged 22 or more who are participating in the New Deal programme for 18–24-year-olds and who receive a wage (see paragraph 32), accredited training also includes participation in a course which prepares New Deal participants to obtain a vocational qualification. Such courses are those which lead to National Vocational Qualifications (NVQs), General National Vocational Qualifications (GNVQs) or other vocational qualifications accredited by nationally recognised awarding bodies and approved by the Department of Economic Development (acting through the Training and Employment Agency) for New Deal funding purposes.

For enquiries about accredited training courses and New Deal participants, contact the Training and Employment Agency details above.

## 6 The pay reference period

### What is the pay reference period for?

56. The pay reference period is for calculating whether the national minimum wage has been paid over a period of time. The worker does not have to be paid the national minimum wage for each hour worked, but he must be paid the national minimum wage on average for the time worked in the pay reference period.

### How long is the pay reference period?

57. The pay reference period is usually the period of time for which a worker's wage is actually calculated. So, workers who are paid weekly will have a pay reference period of one week, workers paid daily will have a pay reference period of one day and workers who are paid monthly will have a pay reference period of one month. However, for the purposes of the national minimum wage a pay reference period cannot be longer than one calendar month. So, employers who wish to pay their workers at intervals more than a month apart, such as those who wish to pay quarterly, will still need to make sure that workers receive the national minimum wage at least as regularly as once a month in order to comply with the law. The following paragraphs explain how pay is allocated to pay reference periods.

### How does the pay reference period work?

58. The pay that is allocated to a pay reference period is:

- pay received during that period; and
- pay earned in that period, but which is not received until the next period. For example, a worker may do some overtime or earn an extra bonus or commission

towards the end of the current period. It may not be possible to calculate the earnings in time to get the money into the pay packet for the current period. But the money will still be counted in the current period when it comes to calculating whether the national minimum wage has been paid, provided it is received in the next period.

59. In such cases, it will not be possible to tell whether a worker has received the national minimum wage for the current pay reference period until the end of the next. Any pay “transferred” in this way from the period when it was received to the period when it was earned must stay transferred. It cannot also be allocated to the pay reference period when it was actually received. That would be double-counting.

60. Example 3 shows how the pay reference period operates.

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#### Example 3: How the pay reference period operates

A shop worker who is paid solely by commission over a four-week pay reference period and whose hours are recorded at 38 hours a week, earns and receives the following each week:

	Week 1	Week 2	Week 3	Week 4
<b>Commission earnings</b>	£142.50	£170.00	£152.00	£160.00
<b>If averaged weekly, the hourly rate would be</b>	$£142.50 \div 38 =$ £3.75 an hour	$£170.00 \div 38 =$ £4.473 an hour	$£152.00 \div 38 =$ £4.00 an hour	$£160.00 \div 38 =$ £4.210 an hour

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61. In Example 4, the worker is paid £4.10 an hour for 38 hours a week and can earn overtime payments. Overtime payments are not made until the pay reference period which follows the current pay reference period in which the overtime is worked. But the sum of these overtime payments can be included in the calculation of national minimum wage pay in

the current pay reference period. In the example, overtime is counted at the standard rate of pay because the premium element does not count towards national minimum wage pay (see Chapter 8).

Example 4: Allocating overtime pay to the previous pay reference period

	Pay reference period 1	Pay reference period 2	Pay reference period 3
<b>A: Hours worked</b>			
Normal	38	38	38
Additional hours	5 (paid in period 2, see column 2, line B)	2 (paid in period 3, see column 3 line B)	3 (paid in period 4)
<b>B: Payment</b>			
Normal	£4.10 x 38 = £155.80	£4.10 x 38 = £155.80	£4.10 x 38 = £155.80
Additional hours	None	£4.10 x 5 = £20.50	£4.10 x 2 = £8.20
<b>C: National minimum wage calculation</b>	£155.80 + £20.50 = £176.30	£155.80 + £8.20 = £164.00	£155.80 + £12.30 = £168.10
<b>D: Hourly Rate</b>	£176.30 ÷ 43 = £4.10	£164.00 ÷ 40 = £4.10	£168.10 ÷ 41 = £4.10

62. In Example 5, commission payments are made to the worker in the pay reference period which follows the pay reference period in which they were earned. However, when national minimum wage pay is calculated for each period, the commission payment earned in the current pay reference period can be included in the calculation of national minimum wage pay in that period, even if it is not paid until the following pay reference period.

### Example 5: Allocating commission pay to the previous pay reference period

	Pay reference period 1	Pay reference period 2	Pay reference period 3
<b>A: Hours worked</b>	38	38	38
<b>B: Commission value of sales made</b>	£30 (paid in period 2, see column 2, line C)	£58 (paid in period 3, see column 3, line C)	£10 (paid in period 4)
<b>C: Payment received</b>			
Hourly pay	£3.50 x 38 = £133.00	£3.50 x 38 = £133.00	£3.50 x 38 = £133.00
Commission	None	£30.00	£58.00
Total pay	£133.00	£163.00	£191.00
<b>D: National minimum wage calculation</b>	£133.00 + <b>£30.00</b> = £163.00	£133.00 + <b>£58.00</b> = £191.00	£133.00 + £10.00 = £143.10
<b>E: Average hourly national minimum wage rate</b>	£163.00 ÷ 38 = £4.29	£191.00 ÷ 38 = £5.03	£143.00 ÷ 38 = £3.76 Does not comply with the national minimum wage

### Allocating annual bonuses

63. Most of an annual bonus received in a pay reference period will count only in that period. However, a proportion of the bonus can count towards pay allocated to the previous pay reference period. For example, if an annual bonus is paid in December and the pay reference period is one month, one twelfth of the bonus can be allocated towards national minimum wage pay in November. The rest of the bonus will count towards national minimum wage pay in December.

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Example 6: Allocating an annual bonus to a pay reference period

A worker is paid 12 monthly instalments of an annual salary of £7,500. He receives a bonus payment in December of £500 for work performance in the 12 months ending on 31 December.

**Calculation for January – October:**

Salary of £7,500 ÷ 12 = monthly payment of £625

Therefore the hourly national minimum wage pay in each of January – October is £625 monthly payment ÷ monthly working time of 152 hours = £4.11

None of the £500 bonus can count towards national minimum wage pay for these months.

**Calculation for November:**

Salary of £7,500 ÷ 12 = monthly payment of £625

Amount of bonus to be taken into account is the proportion which relates to the particular month: £500 ÷ 12 = £41.66

Total national minimum wage payment for November is:

£625.00 + £41.66 = £666.66

Therefore, the hourly national minimum wage pay is that month's payment of £666.66 ÷ monthly working time of 152 hours = £4.38

**Calculation for December:**

Salary of £7,500 ÷ 12 = monthly payment of £625

Amount of bonus to be taken into account is the remaining amount after deducting the amount of bonus allocated to November: £500 – £41.66 = £458.34

Total national minimum wage payment for December is:

£625 + £458.34 = £1,083.34

Therefore, the hourly national minimum wage pay is that month's payment of £1,083.34 ÷ monthly working time of 152 hours = £7.13.

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## Allocating pay based on timesheets

64. Some workers, typically agency workers, are paid according to timesheets agreed by the client for whom they are working and sent to the agency for payment of the wage. Special rules for allocating pay to the correct pay reference period may apply in such cases.

65. The basic rule is that, where pay is based in whole or in part on the hours recorded on a timesheet, the pay for those hours will count towards national minimum wage calculation for that period, provided the pay is received either in that period or the next one. For this to happen, the timesheet must be sent promptly to the agency or employer who must also process it in time to get it into the pay packet for the current reference period or the next one.

66. But special rules apply if the timesheet is received late. If the worker hands in the timesheet less than four working days before the end of the period following the one when the work was done, the payment for that time can be paid either in the period when the timesheet was received or in the next one and will still count in the pay reference period when it was earned. The same rule applies if the timesheet is received even later.

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**Example 7: Allocating pay based on timesheets**

A worker is paid weekly on the basis of timesheets recording hours worked, at £4.20 an hour. He sends in the timesheet promptly in the week after the work done, for the first two weeks' pay. In the fourth week he fails to send in the timesheet in time for the third week's pay to be calculated. It is not handed in until the fifth week, together with the timesheet for week 4. The amount for the timesheet handed in late is counted towards national minimum wage pay for week 3, even though the worker did not receive any money during that week.

	April 1–7 (Week 1)	April 8–14 (Week 2)	April 15–21 (Week 3)	April 22–28 (Week 4)	May 5 (Week 5)
Hours worked	20	20	20	20	20
Timesheet handed in		8 April (for week 1)	17 April (for week 2)		29 April (for week 3) 30 April (for week 4)
Payment received		£84 on 14 April (week 1)	£84 on 20 April (Week 2)	Nil	£84 on 3 May (week 3) £84 on 5 May (week 4)
Counts towards national minimum wage in	£84 week 1	£84 week 2	£84 week 3	£84 Week 4	

## 7 What counts as national minimum wage pay?

### Special make-up of national minimum wage pay

67. To see whether a worker's pay is in line with the national minimum wage, it must be calculated in a particular way. Various specific components of a worker's pay can be counted towards national minimum wage pay. Other components must be excluded.

68. This Chapter explains what counts towards national minimum wage pay. Chapter 8 explains what does not count. This must be carefully checked when calculating whether or not the pay actually received is in line with the national minimum wage. Wrongly including an element of pay that does not count – for example, an unconsolidated regional allowance or extra premium for overtime – could result in the national minimum wage not, in fact, being paid.

### Gross pay: payments excluded

69. The starting-point is gross pay, that is, the pay received by the worker before deducting tax and National Insurance contributions. Gross pay, for the national minimum wage, excludes any of the payments in Box 7 below that an employer makes to the worker:

#### Box 7: Payments excluded from gross pay

- A loan
- An advance of wages
- A pension payment
- A lump sum on retirement
- A redundancy payment
- A reward under a staff suggestions scheme

70. These and other payments excluded from gross pay are explained in more detail in Chapter 8.

71. The basic calculation for each pay reference period is as outlined in Box 8:

**Box 8: Basic calculation of national minimum wage pay**

**Total gross pay**

minus **Box 7 payments and *payments and deductions* which do not count (Chapter 8)**

equals **national minimum wage pay**

### Particular elements of pay that count

72. In addition to a worker's basic pay that he receives for the work he has done, there are other elements of pay that count towards national minimum wage pay. These are explained in paragraphs 73–75.

### Incentive pay

73. Payments made as part of an incentive, merit or any performance-related pay scheme count towards national minimum wage pay. This includes payments related to output like piece work pay and sales commissions.

### Bonuses

74. Bonus payments count towards national minimum wage pay. Paragraph 63 explains how bonuses should be allocated to the pay reference period.

### Tips paid through the payroll

75. Only tips, gratuities or service charges which are paid to the worker through the payroll count towards national minimum wage pay. Tips and gratuities that are paid directly to

the worker by the customer and kept by the worker do not count. If tips are gathered and then redistributed by a so called 'troncmaster' (even if this is the employer) that money will not count towards the national minimum wage unless it is put through the payroll. Of course, a 'tronc' which is paid through the payroll counts regardless of who the 'troncmaster' is.

### **Particular deductions from pay that count**

76. An employer may make deductions from the worker's pay and usually does, if only for income tax and employee's National Insurance contributions. The deductions that count towards national minimum wage pay are explained in paragraphs 77–83.

### **Deduction of income tax and National Insurance contributions**

77. National minimum wage pay is calculated on the gross pay, that is, before deduction of income tax and National Insurance contributions.

### **Deduction of a penalty**

78. If an employer deducts a sum from the worker's pay because of some event, for example, misconduct, where the employer is permitted to make the deduction under the terms of the contract, the deduction counts towards national minimum wage pay.

### **Deduction for an advance of wages**

79. If the employer has provided an advance of wages and subsequently deducts a sum for repayment of all or part of the advance of wages, the deduction counts towards national minimum wage pay for the period when it would normally be paid.

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**Example 8: Treatment of an advance of wages**

A worker normally receives £1,000 a month. In November he applies for and receives an advance of his December pay: £500. His employer subsequently deducts that £500 from the worker's December pay. Assuming that the whole of the standard pay of £1,000 counts towards national minimum wage pay, the advance is treated as follows:

	<b>November</b>	<b>December</b>
Money received:	£1,000 standard + £500 in advanced	£500
Total:	£1,500	
Amount that counts towards national minimum wage pay	£1,500 - £500 = £1,000	£500 + £500 (deduction) = £1,000

**Deduction to pay for purchase of shares or securities by the worker**

80. A worker who buys shares or securities in his firm may want to pay for them by having a deduction made from his pay. If the employer deducts the purchase price from the worker's pay, the deduction counts towards national minimum wage pay.

**Deduction to recover an accidental overpayment of wages**

81. Where an employer finds that he has accidentally overpaid a worker and then makes a deduction from the worker's pay to recover the overpayment, the deduction counts towards national minimum wage pay.

## **Deductions that are not for the employer's own use or benefit**

82. A worker may want to have other sums deducted automatically from his pay, for example, a union subscription or the worker's pension contribution. Such deductions from wages count towards national minimum wage pay, so long as they are not for the employer's own use or benefit. In other words, so long as they are deductions that do not go into the employer's pocket.

83. Any deductions that an employer makes for his own benefit, for example, a deduction for meals, cannot be counted towards national minimum wage pay.

## **Particular payments by the worker that count**

84. Instead of making deductions from the worker's pay for the items covered in paragraphs 78–81, the employer may ask the worker – or the worker may volunteer – to pay the money direct to the employer. In such circumstances, the same principles apply as above, and the amount of the payment is not taken away from the amount that counts towards national minimum wage pay. Therefore, if a worker pays to the employer: a penalty payment, a repayment of a loan or advance of wages; a payment for purchase of shares or securities in the firm; or a refund of an accidental overpayment of wages, there is no reduction in the amount counting towards national minimum wage pay. In practice, this means that the worker cannot subsequently claim that, as a result of making any of these payments, he has not been paid the national minimum wage.

## Payment for goods and services provided by the employer

85. A worker may want to buy goods (shoes, clothing, hi-fi) or services (for example, meals), from his own employer. If he is completely free to choose whether to buy from his employer or from somewhere else, the amount of the purchase price is not taken away from the amount that counts towards national minimum wage pay. The worker cannot subsequently claim that by having bought the items from his employer, he has not been paid the national minimum wage.

86. The important point, though, is that he must not be *required* to buy from the employer. If he is *required* to buy goods or services from the employer, the amount that he pays has to be taken away from the amount that counts towards the national minimum wage, because in effect this would be payment in kind rather than payment in wages (see paragraph 104).

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### Example 9: Goods and services provided by the employer

1. A bank requires its workers to bank with it. Any payment that a worker has to make for banking services will not count towards national minimum wage pay. But if the worker freely chooses to bank with his employer, his payment for banking services will count towards national minimum wage pay.

2. A hotel, youth hostel or holiday centre **requires** its workers to purchase accommodation with it. Anything that the worker pays for accommodation over and above the permitted offset (see Chapter 9) will not count towards national minimum wage pay.

3. A company **requires** its workers to eat meals in its canteen. Anything the workers pay for the meals will not count towards national minimum wage pay. But if a worker freely chooses to eat from time to time in a company canteen, his payment for meals will count towards national minimum wage pay.

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## Accommodation at or below the limit

87. If an employer provides accommodation to a worker, he can deduct an amount from the worker's pay or can charge the worker for the accommodation. There is a limit to the amount of the deduction or charge that can count towards national minimum wage pay. Chapter 9 explains how to work out the accommodation offset in detail.

### Box 9: Summary of what counts as national minimum wage pay

Gross pay excluding items in Box 7 but including:

- Incentive pay
- Bonuses
- Tips paid through the payroll
- Income tax and employee's National Insurance contributions
- Deduction or payment of a penalty
- Deduction or payment to repay a loan
- Deduction or payment to repay an advance of wages
- Deduction or payment to pay for purchase of shares or securities
- Deduction or payment to refund accidental overpayment of wages
- Union subscriptions
- Worker's pension contribution
- Any deduction made by the employer but not for his use or benefit
- Unforced payments by the worker for goods and services from the employer
- Accommodation up to the limit explained in Chapter 9.

## 8 What does not count as national minimum wage pay?

### Gross pay: payments excluded

88. For convenience, the box used in Chapter 7 to show payments that do not count as gross pay is reproduced below. Since the payments do not count as gross pay, they do not count towards national minimum wage pay.

#### Box 10: Payments excluded from gross pay

- A loan
- An advance of wages
- A pension payment
- A lump sum on retirement
- A redundancy payment
- A reward under a staff suggestions scheme

### Particular elements of pay that do not count

89. In addition to the payments indicated above, there are other elements of a worker's pay that do not count towards national minimum wage pay. They must all therefore be subtracted from gross pay. These are described in paragraphs 90–95.

### Overtime and shift premia

90. A worker might be paid at a higher premium rate for working at a particular time or for particular duties: for example, for working overtime, weekend or night shifts, or on Bank Holidays. If so, the premium element of the payment does not count towards national minimum wage pay.

91. To calculate the premium element, the employer must subtract the lowest basic rate that is paid to the worker from the

worker's actual rate of pay. The remaining premium does not count towards national minimum wage pay.

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#### Example 10: Treatment of overtime premium

A worker works a basic 20 daytime hours at £4.10 an hour. He works an additional 5 hours at night from Monday to Friday which is paid at a premium rate of £4.50 an hour. He works 4 hours overtime on Saturday which is paid at a premium rate of £5.00 an hour.

Amount to be subtracted from gross pay:

- 5 hours night work during the week at premium rate of £4.50:  
 $(£4.50 - £4.10^*) \times 5 = £2.00$  premium element
  - 4 hours overtime on Saturday at premium rate of £5.00:  $(£5.00 - £4.10^*) \times 4 = £3.60$  premium element
- \* £4.10 is the lowest basic rate paid and is therefore the rate that must be subtracted from the actual pay rate in order to arrive at the 'premium' payment.

*Total of the premium element is £2.00 + £3.60 = £5.60. Therefore, £5.60 is subtracted from gross pay in order to calculate national minimum wage pay.*

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92. However, if the worker is paid different basic rates for different jobs or duties, rather than premium rates for the same job, then the whole of each rate can be included in the calculation of national minimum wage pay. For example, a worker works part of the day doing semi-skilled work on a machine and is paid £5.00 an hour, but helps clean the factory for another part of the day and is paid £4.10 an hour. There is no premium to subtract in this case.

## 8: What does not count as national minimum wage pay?

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### Example 11: Treatment of overtime premium

This example shows how the national minimum wage would be reached if all pay was included; but also how, when the overtime premium is deducted as the rules require, the national minimum wage has not been reached and the worker is due more pay.

A worker works 40 hours a week and is paid £158.00 basic pay (equivalent to £3.95 an hour), but also works 8 hours overtime paid at £5.00 an hour. Total pay for the week is therefore:

Basic pay:		£158.00
Overtime	8 x £5.00	£40.00
		<hr/>
		£198.00

The worker worked 48 hours in the week so the hourly amount of pay received was  $£198.00 \div 48 = £4.13$ . This is greater than the £4.10 national minimum wage, so the employer might think that this complies with the need to pay the national minimum wage. However, the premium element of the overtime cannot count towards the national minimum wage. The national minimum wage calculation should be:

Basic pay:		£158.00
Overtime	8 x £5.00	£40.00
		<hr/>
		£198.00
Minus overtime premium	8 x £1.05	<hr/>
		-£8.40
National minimum wage pay		£189.60

The worker's hourly rate for comparison with the national minimum wage is therefore:  $£189.60 \div 48 = £3.95$ .

This does not comply with the national minimum wage and the employer will have to pay the difference of £0.15 an hour x 48 = £7.20.

---

## Allowances

93. Special allowances over and above standard pay are sometimes paid by an employer to a worker for all kinds of things: for working in dangerous conditions; working unsocial hours; working in a particular area (for example, London

Weighting); performing special duties over and above a worker's normal duties; being "on call" for work. Such allowances do not count towards national minimum wage pay unless they are consolidated into standard pay. If they are consolidated, they do count towards national minimum wage pay.

## **Expenses**

94. Expense payments or allowances for clothing, travel, subsistence, etc, do not count towards national minimum wage pay.

## **Refund of money spent on work**

95. If an employer refunds money to a worker which the worker has spent on something to do with his job, the refund does not count as national minimum wage pay. This applies, for example, when an employer refunds travel expenses, laundry costs or the price of tools or equipment which the worker has purchased from someone else.

## **Particular deductions from pay that do not count**

96. Deductions made by the employer which do not count towards national minimum wage pay are dealt with in paragraphs 97–99.

## **Deductions for expenditure connected with the job**

97. Deductions which an employer makes to cover the cost of items or expenses which are necessary for the worker's job do not count towards national minimum wage pay. For example, if the employer deducts an amount from pay to cover the cost of safety clothing, a uniform, tools or other equipment needed for the job, the amount deducted does not count towards national minimum wage pay. The employer must pay the worker the national minimum wage in addition to the cost of the tools etc.

### **Deductions for the employer's own use or benefit**

98. If the employer makes any deduction from the worker's pay which is for his own use or benefit (for example, a deduction for meals), the amount deducted will not count towards national minimum wage pay.

### **Particular payments by the worker that do not count**

99. Instead of making deductions from the worker's pay for the items covered in paragraphs 97 and 98, the employer may ask the worker – or the worker may volunteer – to pay the money direct to the employer. If this happens, the same principles apply and the amount of the payment has to be taken away from the amount that counts towards national minimum wage pay.

### **Payments for expenditure connected with the job**

100. If the worker has to buy tools, equipment, uniform or other items from his employer in order to do his job, the amount paid has to be taken away from the amount that counts towards national minimum wage pay. The employer must pay the worker the national minimum wage in addition to the cost of the tools etc.

### **Payments made by the worker to another person**

101. If a worker is expected to pay, for example, his own travel costs or board and lodging when he is doing his job, the payments he makes have to be taken away from the amount that counts towards the national minimum wage.

### **Payments by the worker to the employer for his own use and benefit**

102. As explained in paragraph 85, payments which the worker is required to make and which the employer keeps for

his own use and benefit have to be taken away from the amount that counts towards the national minimum wage.

### Accommodation above the limit

103. If an employer provides accommodation to a worker, he can deduct an amount from the worker's pay or can charge the worker for the accommodation. There is a limit to the amount of the deduction or charge that can count towards national minimum wage pay. If the employer deducts or charges more than the limit, the excess amount does not count towards national minimum wage pay. Chapter 9 explains how to work out the accommodation offset in detail.

#### Box 11: Summary of what does not count as national minimum wage pay

- Items in Box 10, plus
- Overtime and shift premia
- Allowances that are not consolidated into pay
- Expenses
- Refund of money spent on work
- Deduction or payment for tools, uniform, etc.
- Deduction or payment for the employer's own use or benefit
- Payments by the worker to another person connected with the job
- Accommodation above the limit explained in Chapter 9

## 9 Benefits in kind and accommodation

### Treatment of benefits in kind

104. No benefits in kind count towards national minimum wage pay, except accommodation. The special rules on accommodation are explained in paragraphs 108–117.

105. It makes no difference whether a value is attached to the other benefits that do not count. Neither does it make any difference whether the benefit is taxable or not. It remains open, of course, to the employer to offer such benefits to the worker. But, if he does, the value or notional value of the benefits cannot be counted towards national minimum wage pay.

#### Box 12: Examples of benefits in kind that do not count:

Meals

Luncheon vouchers

Fuel

Car

Employer's contribution to the worker's pension fund

Assistance with removals

Medical insurance

**Only accommodation can be counted towards national minimum wage pay, within the limits explained below.**

### Meals do not count towards national minimum wage pay

106. Meals do not count towards national minimum wage pay and an employer cannot offer meals as part of a package that makes up national minimum wage pay. This does not mean that employers who already charge for meals will have to stop charging, for example, in a staff canteen. An employer could require a worker to eat in the staff canteen and then deduct an amount automatically for meals. But if he did, any such

deduction would not count towards national minimum wage pay (see also paragraphs 83, 86 and 98).

107. If an employer who had not previously charged for meals wishes to do so, the same principle applies as in paragraph 106. If the employer automatically deducts an amount for meals, that deduction does not count towards national minimum wage pay, and the worker must still receive the national minimum wage in addition to the meals. The employer can offer the meal for a charge but cannot require the worker to purchase it. It will be for the courts and tribunals to judge whether a worker has been forced to buy meals in any particular case.

### Treatment of accommodation

108. Accommodation is the single exception to the rule about benefits in kind. When an employer provides accommodation for a worker (for example, hotel workers, workers in holiday camps), it is the only benefit in kind that can count towards national minimum wage pay. Sometimes, an employer may make a specific deduction for accommodation from the worker's pay; or he may charge a specific amount once the worker has received his pay. Other employers may not do either, but simply provide accommodation on an uncharged basis as part of a package. In all these cases, the rules allow accommodation to count towards national minimum wage pay.

109. There are special rules for calculating how much can be counted towards national minimum wage pay for the accommodation that is provided. These are explained in paragraphs 110–114.

## How to calculate the accommodation offset

110. There is a limit on the amount that an employer providing accommodation can count towards national minimum wage pay.

111. This is calculated according to either an hourly or daily rate. The rates are set out in Box 13 below. The employer must use whichever is the lower figure produced by either calculation. Generally speaking, the hourly-rate calculation will apply for workers who do fewer than 40 hours a week; and the daily-rate calculation will apply for workers who do 40 hours a week or more.

112. Whichever calculation is used, the amount that can count towards national minimum wage pay must not be greater than £22.75 a week.

### Box 13: Rates for calculating the accommodation offset

<b>A. Hourly rate:</b>	<b>57p</b> for every hour of work in the pay reference period. The total must be reduced proportionately for each day in the pay period that accommodation is not provided.
<b>B. Daily rate:</b>	<b>£3.25</b> for every day accommodation was provided in the pay reference period.
<b>Total applicable offset:</b>	The lower amount from A or B.
<b>Maximum offset:</b>	<b>£22.75</b> a week.

113. The following example explains the calculation in more detail.

---

Example 12: Calculating the accommodation offset

A worker works 28 hours a week but accommodation is not provided for one day in that week.

**A. Hourly-rate calculation**

The amount that can be deducted from pay is:  $28 \times 57\text{p} = \text{£}15.96$ .

From this must be subtracted an amount for the one day on which accommodation was not provided.

The amount to be subtracted will be one seventh of  $\text{£}15.96$ , which is  $\text{£}2.28$ .

Under the hourly-rate calculation, the amount which may count towards national minimum wage pay is **£13.68**.

**B. Daily-rate calculation**

The accommodation is provided for 6 days a week.

Under the daily-rate calculation, the amount which may count towards national minimum wage pay is  $6 \times \text{£}3.25 = \text{£}19.50$ .

For this worker, the total offset for accommodation which can count towards national minimum wage pay is **the lower figure of £13.68** produced by the hourly-rate calculation.

---

114. An employer may charge or deduct more than the maximum permitted accommodation offset of  $\text{£}22.75$  from a worker's pay. But the excess amount above the maximum permitted accommodation offset will not count towards national minimum wage pay.

---

Example 13: How the offset counts towards national minimum wage pay

Taking the example above:

Assume the worker is paid £5.50 an hour and rent of £45 a week is deducted (note: other deductions, for example, for tax and National Insurance, are not included in this example)

Weekly pay £5.50 x 28 =	£154.00
Minus rent charged:	£45.00
<b>Total pay received</b>	<b>£109.00</b>

To see whether the national minimum wage has been paid:

Start with weekly pay:	£154.00
Identify the applicable offset:	£15.96
Subtract the offset from rent charged: £45 - £15.96 =	£29.04
Subtract this excess above the offset from pay:	£124.96
<b>Total pay for national minimum wage =</b>	<b>£124.96</b>

Divide national minimum wage pay by hours:  
 $£124.96 \div 28 = \mathbf{£4.46 \text{ an hour}}$

---

115. The calculation applies in a similar way for workers who are provided with accommodation but who only work part-time, as shown in Example 14 overleaf.

---

#### Example 14: Part-time worker provided with accommodation

A worker works 16 hours a week and is paid £5.00 an hour. Accommodation is provided for the whole week and rent of £50 a week is deducted (note: other deductions, for example, for tax and National Insurance, are not included in this example)

Weekly pay £5.00 x 16 =	£80.00
Minus rent charged:	£50.00
	<hr/>
Total pay received:	£30.00

To see whether the national minimum wage has been paid:

Start with weekly pay:	£80.00
Identify the applicable offset: 16 hours x 57p = £9.12	
Subtract the offset from the rent charged: £50 – £9.12 =	£40.88
Subtract this excess above the offset from pay:	£39.12
<b>Total pay for national minimum wage =</b>	<b>£39.12</b>

Divide national minimum wage pay by hours worked:  
 $£39.12 \div 16 = \mathbf{£2.45 \text{ an hour}}$

In this case the worker is being underpaid by:  
 $£4.10 \text{ an hour} - £2.45 \text{ an hour} = \mathbf{£1.65 \text{ an hour}}$

The worker should be getting at least an additional amount of:	
£1.65 x 16 hours worked =	£26.40
The total pay received should therefore be:	
£30.00 + £26.40 =	£56.40

---

### Adjusting the accommodation calculation for paid absences

116. For workers who are provided with accommodation and who continue to be paid at least the rate of the national minimum wage when they are absent from work, the following calculation applies.

---

Example 15: Worker provided with accommodation and absent

A worker normally works 40 hours a week, is paid £5 an hour and rent of £50 a week is deducted. He is off sick for three days (24 hours) but continues to be paid his normal pay while he is away (note: other deductions, for example, for tax and National Insurance, are not included in this example).

The worker's actual pay received is:	£200.00
Minus rent charged:	£50.00
Total pay received:	£150.00

To see whether the national minimum wage has been paid:

Start with pay for the hours actually worked: £5 x 16 =	£80.00
Calculate proportionate rent for the hours worked:	
£50 (weekly rent) x 16 (hours worked) = £800.00	
divided by 40 (total hours normally worked) =	£20.00
Calculate applicable offset: 16 hours x 57p =	£9.12
Subtract the offset from the proportionate rent,	
£20.00 – £9.12 =	£11.88
Subtract this excess from the pay for hours worked:	£11.88
<b>Total pay for national minimum wage:</b>	<b>£68.12</b>

Divide national minimum wage pay by hours worked:  
 $£68.12 \div 16 = \text{£4.26 an hour}$

---

117. The adjusted calculation in Example 15 only applies when a worker receives at least the national minimum wage when absent. If the worker receives nothing or less than the national minimum wage when absent, the calculation in Example 14 applies instead.

## 10 Hours for which the national minimum wage must be paid: the four different types of work

### Hours for which the national minimum wage must be paid

118. The hours for which the national minimum wage must be paid depend on the type of work which the worker is doing. The employer and worker will need to identify the type of work that the worker is doing, in order to calculate the hours for which the national minimum wage must be paid.

119. There are four types of work: time work; salaried-hours work; output work; unmeasured work. The rules and calculation of hours differ for each. The type of work does not depend on the worker's occupation. Instead, it depends on the way in which the worker is paid for the work that he does.

120. Time work is dealt with in Chapter 11. Salaried-hours work is dealt with in Chapter 12; output work in Chapter 13 and unmeasured work in Chapter 14.

121. It is important to note that any one worker might do different types of work for the same or (more usually) different employers. In that case, the rules and calculation of hours apply differently for each type of work that the worker does. Where this guidance refers to "time worker", "piece worker", "salaried hours worker" etc, it means a person who is doing that particular type of work at the time.

# 11 Hours for which the national minimum wage must be paid: time work

## What is time work?

122. Please ensure that you have read chapter 10 on 'different types of work' before you read this chapter.

123. Time work is work that is paid for according to set or varying hours or periods of time. If a worker is paid according to the number of hours he is at work, the work is treated as time work. It may be four hours one day; six hours the next; four hours the following day; or eight hours every day. Or the worker may be on a contract for a week or a month to do a particular job and be paid for the hours done each week or month. That is also time work. Generally speaking, anybody whose pay goes up or down depending on the actual hours they work is likely to be doing time work. Most workers will be time workers if they are not on an annual salary. Those on an annual salary are covered by the rules for salaried hours in Chapter 12.

124. The time work rules also apply when a person doing piece work is expected to work for a set number of hours per day. For example, a textile worker in a factory may be expected to clock in and out every day and to be working for that time. That work will count as time work.

---

### Example 16: Time work for piece workers doing set hours

An employer runs a factory in which workers are required to be at work for 8 hours a day. The workers are currently paid according to how much they produce in that time.

Because the workers are required to be at work for 8 hours a day, their work must be treated as time work and they must be paid the national minimum wage for that time.

---

125. Whatever the level of the piece rate, the workers must receive, on average, at least the national minimum wage for each hour in the pay period.

---

Example 17: Calculation of national minimum wage pay for piece workers with set hours

A worker is required by the employer to work 40 hours over a 5-day working week at the factory. He is paid each week. This counts as time work.

He makes garments at a piece rate of £1.50 per garment. Normally, he can produce 3 items an hour and earn £4.50.

However, for the first hour each day, his production is not up to normal speed. He produces only 2 garments and earns £3.00 an hour: £1.10 less than the national minimum wage.

The employer is not required to pay him an extra £1.10 for that hour, provided that the worker's weekly earnings, when averaged over the weekly working hours, are at least £4.10 an hour.

Earnings:	35 hours at £4.50	
	(3 garments an hour) =	£157.50
	5 hours at £3.00	
	(2 garments an hour) =	<u>£15.00</u>
		£172.50

Average hourly rate: £172.50 divided by  
40 working hours = £4.31

Earnings comply with the national minimum wage.

---

## Who are time workers?

126. Time work can exist in any sector or occupation. It makes no difference whether the worker is part-time, full-time, temporary, casual or permanent. A worker will be a "time worker" if:

- he has set hours or times at which he is expected to work and is not paid an annual salary;

## 11: Hours for which the national minimum wage must be paid: time work

- he does piece work or commission work in set hours (a piece worker at home is not normally a time worker).

### What hours of work count for time workers?

127. In general, the times when a time worker is required to be available for work, as well as times when he is actually working at the workplace must be included in the calculation for national minimum wage pay. The times when a time worker is absent from work (tea breaks, lunch breaks) should be excluded from the calculation. This does not mean that the worker should not be paid for tea breaks or lunch breaks. It simply means that in calculating national minimum wage pay the length of the rest breaks are ignored.

### Time spent at or near the workplace

128. A time worker must be paid at least the national minimum wage for the times when:

- he is at work and required to be at work (excluding rest breaks). Workers who turn up to work as required and who are available for work must be paid the national minimum wage during that time. It makes no difference whether or not work is actually provided for that time. But time when a worker is absent from work (for example, rest breaks, tea breaks, lunch breaks, sick leave, holiday) does not count as hours of time work;
- he is on standby or on-call at or near the place of work. If the worker is waiting to be given work, the national minimum wage is payable for that time. However, a worker who is on standby or on-call during time when he is at home, or is entitled to be at home, does not have to be paid the national minimum wage for that time, regardless of where he works.

- he is kept at his place of work but is unable to work because plant or machinery has broken down.

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Example 18: Time spent at or near the workplace

1. A worker is called into a factory to help with an urgent order, but there is a delay in materials being delivered. While the worker is at the factory and is ready and available for work, he must be paid the national minimum wage for this time, even though he cannot do any work.
2. A chauffeur is at the office of his employer waiting to start a journey. He would need to be paid the national minimum wage for this “on-call” time.
3. A factory worker is told to wait at a factory for when work is available. He would need to be paid the national minimum wage for this “on-call” time.
4. A worker is “on-call” at home to do some urgent work over the weekend. He does not have to be paid the national minimum wage for the time when he is “on-call” – but he does have to be paid it after he has arrived at work and during the time when he is working.

---

## Travelling time on business

129. There are some periods of travel time when the national minimum wage must be paid. These include time when a worker:

- is travelling in connection with his work during normal working hours or the normal range of hours that the worker does. This includes rest breaks (for example lunch, tea) taken on board the train, bus, plane etc. But travel between home and work and back again does not count as time when the national minimum wage is payable;
- is waiting for a train or changing trains or other form of transport. However, if time spent waiting coincides

11: Hours for which the national minimum wage must be paid:  
time work

with a rest break, for example a lunch or a tea break, it does not count as time when the national minimum wage is payable;

- is travelling from one work assignment to the next. But rest breaks in the travelling do not count;
- is waiting to collect goods, to meet someone in connection with his work or to start a job. That time counts as time when the national minimum wage is payable;
- is travelling to training during normal working hours. Travel from work to the place of training counts as time when the national minimum wage should be paid. But travel between home and the place of training does not count.

---

### Example 19: Travel time on business

1. On a normal day, a worker leaves home at 8.00am to travel to his normal place of work to begin work at 9.00am. The worker's normal working day is from 9.00am to 5.00pm with a lunch break from noon to 1.00pm. On a particular day, he is required to leave his normal place of work at 3.00pm to travel for 30 minutes to a client on the business of his employer. This time must be included as time worked for NMW calculation purposes

2. A person is employed as a salesman. He starts work at 9.30am when he visits his first customer. That appointment lasts for half an hour until 10.00am. He then travels for one-and-a-half hours without any break to his second appointment which is at 11.30am. The period that he travels between appointments, as well as for the period when he is working with his customers must be treated as time worked for NMW calculation purposes.

3. A delivery driver is required to collect goods at 11.00am, but the goods have not arrived at the depot. The driver has to wait an hour for them to arrive. This hour has to be treated as if it was travel time and must be treated as time worked for NMW calculation purposes.

4. A care worker has an assignment at 9.00am followed by a half-hour assignment at 9.30am to which he travels direct. He must be paid the national minimum wage from 9.00am to 10.00am.

After the second appointment he has a further appointment at noon but returns home in the meantime. He does not have to be paid the national minimum wage for the time spent travelling from his second appointment to his home; or from his home to his third appointment.

If the care worker travels direct to the noon appointment and takes a rest break on the way, the period when he was travelling must be treated as time worked for NMW calculation purposes but the rest break can be excluded.

---

### Training time

130. A worker must be paid the national minimum wage for time spent training at or away from the place of work during normal working hours.

11: Hours for which the national minimum wage must be paid:  
time work

## What hours do not count for time workers?

131. The following paragraphs describe the times when the national minimum wage does not have to be paid to time workers.

### Travelling between home and work

132. A time worker is not entitled to be paid the national minimum wage when he is travelling between home and his place of work or place of training.

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#### Example 20: Travel time between home and work

On a normal day, a worker leaves home at 8.00am to travel to his normal place of work to begin work at 9.00am. The worker's normal working day is from 9.00am to 5.00pm with a lunch break from noon to 1.00pm. **The worker does not need to be paid the national minimum wage for travelling into work from home and back again.**

On another day, he is required to work at a place other than his normal place of employment. He leaves home at 6.00am to begin work at 9.00am. **The worker does not need to be paid the national minimum wage for this additional travelling time.**

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### Absences from work

133. For time workers, absences from work, and any pay received for those absences, are ignored when calculating national minimum wage pay. Particular absences are discussed in paragraphs 134 and 135.

### Rest breaks

135. The national minimum wage does not need to be paid for any period when a time worker is absent from work. Recognised lunch and other rest breaks are regarded as absences from work, even if work is done during this time (but if a worker is *required* to work at that time, then it would not count

as a rest break). Time spent on lunch breaks is not included in the calculation of national minimum wage pay for time workers.

### **Holidays, sick leave, maternity leave**

135. Periods when the time worker is on holiday, sick or on maternity leave do not count in the calculation of national minimum wage pay. However, the normal rules governing statutory paid holidays, sick pay and maternity pay apply. Neither the money received for such absences from work, nor the length of the absences themselves, are counted when calculating the national minimum wage pay of time workers.

### **Industrial action**

136. Time when a worker is engaged in industrial action is treated as time that the worker is absent from work. Those hours therefore do not count towards time when the national minimum wage is payable. It makes no difference whether the industrial action is a full strike, go-slow or work-to-rule; or whether the worker, under his contract, remains entitled to full or partial pay. Any pay received for those hours, as well as the hours themselves, is ignored when calculating national minimum wage pay.

### **Sleeping between duties**

137. If a worker arranges with his employer to sleep at the place of work, and he is provided with suitable facilities for doing so, the time when he is permitted to sleep and is not working will not be treated as time when the national minimum wage is payable. But if he has to get up and do some work during the night, the time spent awake and working will count as time when the national minimum wage is payable.

## 11: Hours for which the national minimum wage must be paid: time work

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### Example 21: Sleeping time

A care assistant is employed at a residential care home and is required to be on the premises overnight from 10.00pm until 6.00am. He is allowed to sleep between the hours of 11.30pm and 4.30am if he is not required to care for a resident, and he is provided with a bed for this purpose. This sleeping period does not count for the national minimum wage, but the minimum wage must be paid for the periods 10.00pm to 11.30pm and 4.30am to 6.00am. Thus the worker is entitled to a minimum of 3 hours' pay at the national minimum wage rate each night.

If the worker is woken to attend to a resident during the normal sleeping hours, he must be paid for the period he is awake. Therefore, if he is attending to a resident during the night and is awake from 2.00am to 3.00am for this purpose, he is entitled to the national minimum wage for that hour.

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## Summary of time work hours that count and do not count

138. When calculating the hours of time work for which the national minimum wage is payable, the employer or worker should include the following.

### Box 14: Time work hours that count

The following hours of time work count:

- time spent at or near the workplace, excluding rest breaks
- travelling time on business
- training time
- time spent awake for the purpose of working during sleeping time

## 12 Hours for which the national minimum wage must be paid: salaried-hours work

### What is salaried-hours work?

139. Please ensure that you have read chapter 10 on ‘different types of work’ before you read this chapter.

140. Salaried-hours work is where a worker:

- is paid under his contract for a set basic number of minimum hours in a year; and
- is entitled under his contract to an annual salary; and
- is paid in equal instalments, for example 12 monthly or 52 weekly instalments.

141. To count as salaried-hours work, it does not matter how many hours the worker may do in the week or month, so long as the weekly or monthly instalments remain the same.

Variations in the weekly or monthly instalments do not stop the work being salaried hours work, for example if a variation results from:

- a performance bonus;
- a pay increase;
- pay for working hours in excess of the basic hours;
- the worker leaving part-way through the week or month.

### Who are salaried-hours workers?

142. Salaried-hours work could exist in any sector or occupation. Most office workers, public-sector workers and workers with large companies are likely to be paid on the basis of an annual salary.

## 12: Hours for which the national minimum wage must be paid: salaried-hours work

143. Salaried-hours workers include workers who work for only part of the year but are paid in instalments all year round. For example, cleaning or catering or caretaking staff in schools are often paid a regular weekly or monthly amount throughout the year, both when they are working in term time and when they are not working during the school holiday.

### What hours of work count for salaried-hours workers?

144. Broadly speaking, a salaried-hours worker is counted as working at the same times as a time worker, for example when:

- he is at work and required to be at work (see paragraph 128);
- he is on standby or on-call at or near the place of work (see paragraph 128);
- he is kept at his place of work but cannot work because of machine breakdown (see paragraph 128);
- he is travelling on business during normal working hours (see paragraph 129);
- he is training or travelling to training during normal working hours (see paragraph 130).

145. Unlike the case with time workers, hours of absence are counted in for a salaried-hours worker if the worker is paid his normal pay when he is absent. Absences such as rest breaks, lunch breaks, holidays, sick absence or maternity leave are counted towards time when the national minimum wage is payable if they form part of the worker's basic minimum hours under the contract. This means that the periods of absence and the amounts paid for them must be taken into account when calculating national minimum wage pay.

## What hours do not count for salaried-hours workers?

146. The only hours that do not count as time when a salaried-hours worker should be paid the national minimum wage are described in paragraphs 147–149.

### Periods paid at less than normal pay

147. When a worker is away, for example, on long-term sick absence, his salary may drop to a proportion of his normal salary. The employer may not pay sick pay, or may pay for sick absence at a lower rate than the worker's normal basic rate. The period of this absence does not count as part of the basic annual hours of the contract. It must be subtracted from the total hours for which the national minimum wage is payable in the pay reference period.

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#### Example 22: Long-term sick leave

A worker is paid his full hourly pay of £5.00 an hour for the first six weeks of any sick absence. After this period the employer pays only half-pay of £2.50 an hour. The hours of absence paid at the full rate count as part of the basic hours under the contract (since the worker is treated the same as if he were at work). But once he is not receiving full pay, the absence is not counted as work time for calculating the national minimum wage pay of the salaried-hours worker.

---

### Other long-term absence

148. A company may allow a worker to take six months or a year unpaid leave. This time does not count as the basic annual hours of the contract and must be subtracted from the total hours for which the national minimum wage is payable in the pay reference period.

## 12: Hours for which the national minimum wage must be paid: salaried-hours work

### **Industrial action**

149. Time when a salaried-hours worker is engaged in industrial action is treated as time that the worker is absent from work. Those hours therefore do not count towards time when the national minimum wage is payable. It makes no difference whether the industrial action is a full strike, go-slow or work-to-rule; or whether the worker, under his contract, remains entitled to full or partial pay. Any pay received for those hours, as well as the hours themselves, is ignored when calculating national minimum wage pay in the pay reference period.

### **Calculating hours of salaried work for which the national minimum wage is payable**

150. For salaried work, the contract between the worker and employer must set out a basic number of hours for which the worker must be paid. The hours do not have to be specified for the whole year (for example, 2,000 hours a year) but can be expressed as a weekly number of hours or a monthly number of hours instead. The main thing is that it should be possible to calculate what the basic annual number of hours is.

### **Calculation when the worker does not work any more than the basic annual hours**

152. The first step is to calculate the salaried hours worked in a pay reference period.

153. To do this, divide the basic minimum hours for the year by the frequency of payment as indicated in the box below.

**Box 15: Calculating the salaried hours in a pay reference period**

**1. For a pay reference period of a week:**

Divide the basic yearly hours by 52:  $2,080 \div 52 = 40$  hours a week

**2. For a pay reference period of a month:**

Divide the basic yearly hours by 12:  $2,080 \div 12 = 173.3$  hours a month

**3. For a pay reference period which is neither a week nor a month, because a worker joins or leaves during a pay reference period:**

Divide 365 by the number of days in the pay reference period (for example, 28 for a worker paid every four weeks):  
 $365 \div 28 = 13$

Divide the basic yearly hours by the number obtained:

$2,080 \div 13 = 160$  salaried hours in 28 days

**4. Reduce the salaried hours in the pay reference period by the number of hours when:**

the worker was absent and not being paid full salary;

the worker was taking industrial action.

153. The following examples show how to calculate whether a salaried-hours worker has received the national minimum wage when he does not work any more than the basic annual hours.

12: Hours for which the national minimum wage must be paid:  
salaried-hours work

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Example 23: Calculation of national minimum wage pay for a salaried-hours worker who does not work any more than the basic annual hours

1. A worker is paid £8,640 basic pay a year. He is paid regular monthly instalments of £720. He must work 40 hours a week including breaks.

Identify annual hours:  $52 \times 40 = 2,080$

Identify hours in pay reference period:  $2,080 \div 12 = 173.3$  hours

The 173.3 hours in the pay reference period are taken to have been worked, even in months with a longer or shorter number of working days and hours.

To calculate whether the national minimum wage has been paid:

Divide monthly pay £720 by 173.3 hours = **£4.15 an hour**.

2. A worker is employed as a school cleaner during term-time only. When he is working he does a 40-hour week for 35 weeks a year. He gets paid a regular £148 a week all year round, whether he is working or not.

Identify annual hours:  $40 \times 35 = 1,400$

Identify hours in pay reference period:

$1,400 \div 52 = 26.9$  hours

The 26.9 hours in the pay reference period are taken to have been worked, even when the worker has done 40 hours during term-time or no hours during the holiday.

To calculate whether the national minimum wage has been paid:

Divide weekly pay £148 by 26.9 hours = **£5.50 an hour**.

---

**Box 16: Pattern of pay and hours for a salaried-hours worker who does not work more than the basic annual hours**

Assumptions: term-time worker, basic annual hours 30 weeks x 40 hours = 1,200 paid £410 a month

Month	Salaried hours	Hours worked	Pay received	Hourly national minimum wage pay
January	100	120	£410	£4.10
February	100	160	£410	£4.10
March	100	160	£410	£4.10
April	100	nil	£410	£4.10
May	100	180	£410	£4.10
June	100	160	£410	£4.10
July	100	20	£410	£4.10
August	100	nil	£410	£4.10
September	100	80	£410	£4.10
October	100	160	£410	£4.10
November	100	100	£410	£4.10
December	100	60	£410	£4.10
<b>Totals</b>	<b>1,200</b>	<b>1,200</b>	<b>£4,920</b>	<b>£4.10</b>

**What if hours actually worked in the year are greater than the basic hours set out in the contract?**

154. Sometimes, a worker may do all his hours under his annual contract before the end of the contractual year. When this happens, the national minimum wage calculation for the relevant pay reference period(s) must include those extra hours. This rule applies only where the worker's contract does not entitle him to additional pay for the extra hours. If the worker is paid for the extra hours (for example, because they are treated as overtime), he is treated as if he were doing time work for those hours and there is no need to do a special calculation.

12: Hours for which the national minimum wage must be paid:  
salaried-hours work

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Example 24: Salaried-hours worker paid for extra hours outside the contract

A worker has an annual contract with 2,040 hours (12 months x 170 hours), running from January to December. He normally works no more than 170 hours a month. But in October he has to put in 20 extra hours. Anticipating that this will take him above his contract hours by the end of December, his employer pays him in November for the 20 extra hours – in addition to his normal monthly pay. There is no need to make any further calculation.

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### Calculating the excess hours worked by a salaried-hours worker

155. Once a salaried-hours worker has worked for more than the basic annual hours, he must be paid the national minimum wage for the excess hours. The payments must be made both for the pay reference period when the worker first goes into the extra hours; and for any remaining pay reference periods in the year.

156. The first thing to do is to work out whether the worker has done more than the basic hours. If the contract is to work 2,040 hours a year and stays at that throughout the year, the basic hours are 2,040. Once those 2,040 hours have been worked, the extra unpaid hours must be paid for at no less than the national minimum wage.

157. To calculate whether the worker has done more than the basic hours, add together:

- the basic hours which the worker has worked;
- the hours within basic hours for which the worker has been absent;
- the unpaid extra hours which the worker has worked.

158. Hours when the worker was engaged in industrial action must be excluded.

159. The following table shows the pattern of pay and hours when a worker does more than the basic annual hours in his contract.

**Box 17: Pattern of pay and hours for a salaried-hours worker who works more than the basic annual hours under his contract**

Assumptions: worker has a contract with 2,040 basic hours (12 x 170 hours/month) and is paid £8,364 a year (£697 a month)

1	2 Basic hours	3 Actual hours worked (extra)	4 Actual hours worked: running total	5 Pay received	6 National minimum wage pay/hour
April	170	190 (20)	190	£697	£4.10
May	170	180 (10)	370	£697	£4.10
June	170	200 (30)	570	£697	£4.10
July	170	190 (20)	760	£697	£4.10
August	170	200 (30)	960	£697	£4.10
September	170	190 (20)	1,150	£697	£4.10
October	170	200 (30)	1,350	£697	£4.10
November	170	190 (20)	1,540	£697	£4.10
December	170	190 (20)	1,730	£697	£4.10
January	170	200 (30)	1,930	£697	£4.10
February	170	180 (10)	2,110*	£697	£3.08*
March	170	170 (-)	2,280**	£697	£2.05**

\* For the detailed calculation, see Box 18

\*\* For the detailed calculation, see Box 19

160. As Box 17 shows, the worker may exceed his annual contract hours part-way through a pay reference period (February). In this case, he is treated as having worked his proportionate basic hours up to the day in the pay reference period when the contract hours are exceeded; and after that day, as having worked his proportionate basic hours for the remainder of the pay reference period. In addition, his extra hours are counted as hours worked. Box 18 sets out the calculation for this pay reference period.

12: Hours for which the national minimum wage must be paid:  
salaried-hours work

Box 18: Calculating hours that count in the pay reference period when the basic hours are exceeded

\*Pay reference period when the basic hours are exceeded. To work out the national minimum wage pay in this period:

1. Identify the day when the basic hours are exceeded (assume 15 February).
2. For the 14 days before basic hours are exceeded, calculate the hours as follows:
  - Divide the 14 days by 365 = 0.038
  - Multiply the basic annual hours by 0.038:  $2,040 \times 0.038 = \underline{78.247 \text{ hours (a)}}$
  - Deduct any hours taken as unpaid leave: 0
3. For the 14 days after basic hours are exceeded, calculate the hours in the same way:
  - Divide the 14 days by 365 = 0.038
  - Multiply the basic annual hours by 0.038:  $2,040 \times 0.038 = \underline{78.247 \text{ hours (b)}}$

But note that you cannot make any deductions for unpaid leave

4. Identify hours actually worked from 14 to 28 Feb:  
(say 10 days x 7 hours) = 70 hours (c)
5. Add together the hours at (a), (b) and (c):

$$78.247 + 78.247 + 70 = \mathbf{226.493 \text{ hours.}}$$

*The national minimum wage must therefore be paid for 226.493 hours.*

6. To obtain the hourly rate, divide pay received by hours for which the national minimum wage must be paid:  
 $£697 \div 226.493 = \mathbf{£3.077 \text{ an hour.}}$
7. For the worker to receive the national minimum wage, he must be paid, for this pay reference period, an additional amount calculated as follows:

$$£3.10 - £3.077 = £1.023 \text{ an hour} \times 226.493 \text{ hours} = £231.702$$

8. His full pay for this pay reference period should therefore be:  
 $£697 + £231.702 = \mathbf{£928.70}$  (rounded to the nearest penny)

161 For all subsequent pay reference periods once the annual contract hours have been exceeded, the worker is treated as having done the actual hours worked, plus the proportionate number of the basic minimum hours. Box 19 sets out the calculation.

**Box 19: Calculating the hours that count in a pay reference period following the one in which the basic hours were exceeded**

\*\* Pay reference period following the one in which the basic hours were exceeded.

1. Add together the basic hours for the period: 170+  
and the hours actually worked in the period: 170  
340 hours
2. The number of hours for which the national minimum wage must be paid is 340.
3. Divide pay received by the number of hours for which the national minimum wage must be paid:  
 $£697 \div 340 = \text{£}2.05 \text{ an hour.}$
4. For the worker to receive the national minimum wage, he must be paid, for this pay reference period, an additional amount calculated as follows:  
 $£4.10 - £2.05 = £2.05 \text{ an hour} \times 340 \text{ hours} = £697$
5. His full pay for this pay reference period should therefore be:  
 $£697 + £697 = \text{£}1,394$

**Fixing the starting point for calculating the year, for salaried-hours workers who work more than the basic hours**

162. To estimate whether extra hours have been worked, over and above the basic hours in a contract year, it is necessary to fix the starting point for the calculation.

12: Hours for which the national minimum wage must be paid:  
salaried-hours work

163. The starting point for calculating the contract year is different, depending on whether a worker was already employed when the national minimum wage came into force on 1 April 1999; or whether he started a new job after that date. It also depends on whether the worker is paid monthly or weekly. Box 20 sets out the details.

**Box 20: Starting-point for calculating the contract year, when a salaried-hours worker does more than the basic hours**

**1. For all workers already employed on 1 April 1999, the year is:**

1 April 1999 – 31 March 2000 and starting on 1 April each subsequent year, while continuing in the same job.

**2. For monthly-paid workers who started a job with a new employer after 1 April 1999, the year is:**

● **If they started on the first day of a month, say 1 May:**

1 May 1999 – 30 April 2000 and starting on 1 May each subsequent year, while continuing in the same job.

● **If they start part-way through a month, say 15 May:**

15 May 1999 – 31 May 2000 and then starting on 1 June and ending on 31 May each subsequent year, while continuing in the same job.

**3. For weekly-paid workers who started a job with a new employer after 1 April 1999, the year is:**

● **If they start on, say, 22 May:**

22 May 1999 – 21 May 2000 and starting on 22 May each subsequent year, while continuing in the same job.

## Identifying the basic hours when a contract is changed

164. Boxes 16 and 17 assume that the hours in the annual contract stay fixed. But if the contract hours are reduced or increased at some point in the year, this will have an effect on

whether and when the worker does more hours than the basic hours. There are two different ways of identifying the basic hours of a contract that is changed.

165. The first method applies when, for example, the worker or employer wants to identify what the basic hours are, before the contract is changed. In this case, the basic hours are the same as the hours that were fixed before the change takes place.

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Example 25: Identifying basic hours before a contract is changed

An annual contract of 2,040 hours runs from April to March. The contract hours are reduced to 1,900 hours from 1 November.

If the basic hours are calculated at any time before November, the number is 2,040.

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166. The second method applies, for example, when the worker or employer wants to identify what the basic hours are, after the contract is changed. In this case, the calculation is as follows.

12: Hours for which the national minimum wage must be paid:  
salaried-hours work

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Example 26: Identifying basic hours after a contract is changed

An annual contract of 2,040 hours runs from April to March. The contract hours are reduced to 1,900 hours from 1 November.

If the basic hours are identified at any time from 1 November onwards, it is necessary to get the right proportion of annual hours in the right part of the year. To do this:

Work out how many days there are to the end of the contract year:  
151

Divide them by 365 and multiply by the new contract hours (1,900):  
 $151 \div 365 \times 1,900 = 786$  hours (a)

Work out how many days there were from the start of the contract year to the day before the contract was changed:  $365 - 151 = 214$

Divide them by 365 and multiply by the previous contract hours (2,040):

$214 \div 365 \times 2,040 = 1,196$  hours (b)

The basic hours at this point are:  $786 + 1,196 = 1,982$  hours.

---

167. If the contract hours are changed more than once during the year, a similar method is used to get the right proportion of hours in the right part of the year, as shown below.

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Example 27: Identifying basic hours after a contract is changed twice

An annual contract of 2,040 hours runs from April to March. The contract hours are reduced to 1,900 hours from 1 November; and to 1,800 hours from 1 February. If the basic hours are identified at any time on or after 1 February, it is necessary to get the right proportion of annual hours in the right part of the year. To do this:

1. Work out how many days there are to the end of the contract year from the last time the contract was changed: 59
  2. Divide them by 365 and multiply by the new contract hours (1,800):  

$$59 \div 365 \times 1,800 = 290 \text{ hours (a)}$$
  3. Work out how many days there were from the first time the contract was changed to the second (and last) time it was changed: 92
  4. Divide them by 365 and multiply by the contract hours for that period (1,900):  

$$92 \div 365 \times 1,900 = 479 \text{ hours (b)}$$
  5. Work out how many days there were from the start of the contract year to the day before the contract was first changed:  

$$365 - 59 - 92 = 214$$
  6. Divide them by 365 and multiply by the previous contract hours (2,040):  

$$214 \div 365 \times 2,040 = 1,196 \text{ hours}$$
  7. The basic hours at this point are:  $290 + 479 + 1,196 = 1,965$  hours.
- 

168. When the hours in salaried-hours contracts are changed, the above calculations provide the new starting-point to calculate whether, and if so when, the worker has done more than the basic hours.

12: Hours for which the national minimum wage must be paid:  
salaried-hours work

## What if a salaried-hours worker leaves before the end of the year?

169. If a salaried-hours worker leaves before the end of the year, he may be found to have worked more hours than the basic minimum hours for the part of the year he has been employed. For example, a worker who is on an annual contract of 2,040 hours and who leaves after six months having done 1,200 hours actual work, will have worked 180 additional hours ( $1,200 - 1,020$  ( $2,040 \div 2$ ) = 180).

170. To calculate whether excess hours have been worked (for minimum wage purposes) when a worker leaves, see Box 21.

### Box 21: Calculating excess hours when a worker leaves

1. Add together the actual hours worked since the beginning of the contract year. If the worker in Box 17 left after six months, this would be: 1,150 hours.
2. Add together the basic contract hours since the beginning of the contract year:  $6 \times 170 = 1,020$  hours.
3. Subtract:  $1,150 - 1,020 = 130$  excess hours.
4. The hours for which the national minimum wage is payable in the worker's final pay reference period are therefore:  
 $170 + 130 = 300$  hours
5. To calculate hourly pay, divide  $\pounds 697$  by  $300 = \pounds 2.323$ .
6. To comply with the national minimum wage, the worker would have to be paid an additional amount:  
 $\pounds 4.10 - \pounds 2.323 \times 300 = \pounds 533.10$ .
7. The worker's pay for his last pay reference period should therefore be:  $\pounds 697 + \pounds 533.10 = \pounds 1,230.10$ .

171. The same principle applies if a worker leaves during the year, when he has already worked more than the basic hours in the contract. The excess hours must be paid for; and the worker's annual basic hours continue to count, even during the part of the year when he is no longer working. This is because he has, in fact, already worked those hours by the time he leaves, but has not been paid for them. For example, if the worker in Box 17 left at the end of February, he would have to be paid the extra hours worked up until then. But he would also have to be paid for the 170 hours in March that he had already worked earlier in the year.

### Some general points to bear in mind

172. On a more general level, employers and salaried-hours workers may find it helpful to keep in mind the following principles:

- In order to count as salaried hours work the contract must allow the basic hours to be worked out over the year. It must be clear what the weekly or monthly contractual hours are, if the annual hours are not specified.
- Calculate the basic hours for each pay reference period, based on how frequently the worker is paid. Ensure the worker is paid the national minimum wage for these hours in each pay reference period.
- For salaried-hours workers whose annual pay is close to the national minimum wage minimum or whose actual hours may significantly exceed their basic hours keep a check on hours worked in a year, to see if the workers are doing more hours than were specified. As a rough guide, a worker on 2,040 hours a year and receiving pay of £8,364 a year would be close to the national minimum wage minimum ( $£4.10 \times 2,040 = £8,364$ ).

12: Hours for which the national minimum wage must be paid:  
salaried-hours work

For workers whose pay is well above the threshold, checking of hours should be less necessary: for example, a worker on 2,040 basic hours a year and receiving pay of £15,000 a year could, in theory, do more than 1,000 extra hours in the year and still be receiving at least the national minimum wage every month (Note: the above examples are intended only as an illustration.)

- Decide whether to pay for excess hours as they are worked in each pay reference period; or to calculate and pay for them later.
- Subtract absences – but only if the absence is not paid for at the normal rate for hours worked **or** is the result of industrial action.

## 13 Hours for which the national minimum wage must be paid: output work

### What is output work?

173. Please ensure that you have read chapter 10 on ‘different types of work’ before you read this chapter.

174. Output work is work that is paid for according to the number of things that a worker makes or the number of sales or deals that he makes. It is commonly known as “piece work” or “commission work”.

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#### Example 28: Output work

A farmer employs a worker to harvest fruit on a piece work basis at a rate of £1.50 for each tray of fruit picked. The employer does not set any hours of work and the worker is free to start and finish work whenever he wishes. This is output work.

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175. However, if the worker is doing piece work or commission work and the hours of work are fixed by the employer, this counts as “time work” even if the worker is also paid according to how much he produces. Chapter 11 sets out the way of calculating hours of time work.

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#### Example 29: Piece worker doing time work

A farmer employs a worker to harvest fruit on a piece work basis at a rate of £1.50 for each tray of fruit picked. He requires the worker to start work at 8.00am and finish at 4.30pm with a lunch break between 12.30pm and 1.00pm. This worker is doing time work.

Although, on the basis of £1.50 for each tray picked, the worker may earn more or less than the national minimum wage in any one hour, he must be paid at least the national minimum wage for each hour of working time when averaged over the pay reference period.

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13: Hours for which the national minimum wage must be paid:  
output work

## Who are output workers?

176. Typical output workers are: piece workers working at home; some agricultural workers (usually casual workers); commission workers (door-to-door or tele-sales).

## Calculating hours of output work

177. Under minimum wage rules, employers are allowed to pay workers according to the number of pieces produced. But the national minimum wage is an hourly rate and not a piece rate. The rate for the number of pieces produced therefore needs to be linked to the national minimum wage rate.

178. The employer will need to identify the number of hours to be worked.

179. There are two options for identifying the hours of an output worker:

- coming to a “fair estimate” agreement of hours to be worked; or
- paying the national minimum wage for every hour worked.

## “Fair estimate” agreement of hours to be worked

180. This is a written agreement with the worker which must be agreed before the start of the pay reference period which it covers. The “fair estimate” agreement must:

- set out the number of hours that it is estimated the worker is likely to spend on doing the output work in the pay reference period. This estimate will not count as “fair”, if it is less than four-fifths of the time an average worker would take to do the same amount of work in the same conditions;

- require the worker to keep a record of the hours of output work that he does in the pay reference period. The worker must give this record to the employer as soon as possible after the end of the period.

181 For the “fair estimate” agreement to be valid, there also needs to be a contract which gives the worker the right to be paid an agreed piece rate or commission rate for each bit of measurable output (for example, each item produced or sale made in the pay reference period (or for each sale completed as a result of work done in the pay reference period)).

#### Box 22: The “fair estimate” agreement

The agreement must:

- be agreed between the worker and employer;
- be made before the start of the pay reference period that it covers. If the worker is paid daily, the agreement must be made for each day; and for each week if the worker is paid weekly;
- be in writing;
- set a fair estimate of the number of hours the worker is likely to work in the pay reference period;
- require the worker to keep a record of actual hours worked and to give it to the employer as soon as possible after the end of the pay reference period;
- be supported by a contract between the worker and employer which sets the agreed piece rate.

Note: one agreement can cover a number of pay reference periods if the worker is expected to do the same amount of work in each of them.

182. The main provisions of the “fair estimate” agreement are summarised below:

13: Hours for which the national minimum wage must be paid:  
output work

## How the “fair estimate” agreement works

183. Under minimum wage rules, a worker can be paid according to output, but whatever his level of output he must be paid at least the national minimum wage for the hours he works, up to the limit set in the ‘fair estimate’ agreement. If there is no valid fair estimate agreement, he must be paid for all hours actually worked.

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Example 30: Piece work pay does not reach the national minimum wage

A worker is expected to make an average of 2 items an hour or 80 items a week. His “fair estimate” agreement says he will work for 40 hours in the one-week pay reference period. His piece rate contract says he will be paid £2.10 per item.

If he works 40 hours or more, he must be paid at least £164.00 (40 x £4.10 if aged above 21), whatever his level of output over those hours. If he produced only 60 items, he would earn only £126.00 (60 x £2.10) from his piece-rate in the week. This would have to be made up to £164.00.

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184. If the worker works for more than the “fair estimate” hours, he need only be paid the national minimum wage for the “fair estimate” hours. But he is entitled to be paid the piece rate specified in his contract for any additional goods produced in the extra hours.

185. If the worker works fewer hours than in the “fair estimate” agreement, he must be paid the national minimum wage for the actual hours worked.

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Example 31: Worker does not work the “fair estimate” hours

A worker is expected to make an average of 2 items an hour or 80 items a week. His “fair estimate” agreement says he will work for 40 hours in the one-week pay reference period. His piece rate contract says he will be paid £2.10 per item.

In a particular week, because of home commitments, he can work only 30 hours. This is 10 hours fewer than the “fair estimate”. He need be paid only the national minimum wage for the 30 hours worked. This is £123 (30 x £4.10).

But if he produces two items an hour over these 30 hours and his piece rate is £2.10 an item, his pay would be £126.00 (30 x 2 x £2.10).

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## Travel time for output workers

186. An output worker must be paid at least the national minimum wage for time spent travelling in connection with the job: for example, the time spent by a commission salesman travelling from one appointment to the next. Such time must therefore be included in any “fair estimate” of hours to be worked. It does not include time spent travelling between home and the place of work but it will include time that an output worker who makes things at home spends travelling from home to the place he reports.

## Paying the national minimum wage for every hour worked

187. Unless a “fair estimate” agreement is reached between the employer and the worker, the employer must pay the worker the national minimum wage for every hour worked, regardless of the number of items produced. The general record-keeping requirements apply (chapter 17), as does the reversal of the burden of proof, so an employer with no fair estimate agreement will still need to keep accurate information about the hours worked by his workers.

## Some general points to bear in mind

188. An employer of output workers should:

- decide an option for working out the hours of an output worker: either the “fair estimate” agreement or paying for every hour claimed;
- if there is a “fair estimate” agreement, ensure this:
  - is in place before work begins at the start of each reference period;
  - states the “fair estimate” of hours to be worked;
  - is accompanied by a contractually agreed piece rate;
  - is backed by records of hours kept by the worker.

## 14 Hours for which the national minimum wage must be paid: unmeasured work

### What is unmeasured work?

189. Please ensure that you have read chapter 10 on ‘different types of work’ before you read this chapter.

190. Work is unmeasured work if it is not time work, salaried-hours work or output work. It includes, in particular, work where there are certain tasks to be done but no specified hours or times when they must be done. The employer requires the worker to work when needed or when work is available.

191. Employers need to ensure that the work is not time work, salaried-hours work, or output work. If the work fits any of those categories, then it is not unmeasured work.

### Who does unmeasured work?

192. Workers who do unmeasured work could be people without set hours or an annual salary and whose job is to look after a hostel or an inn. They could be domestic staff without set hours or an annual salary

### Calculating hours of unmeasured work

193. The employer must pay the minimum wage to people who do ‘unmeasured’ work. Because the minimum wage is an hourly rate, this is not always straightforward.

194. There are two options for identifying the hours of unmeasured work to be done:

- coming to a “daily average” agreement of hours to be worked; or
- paying the national minimum wage for every hour worked.

14: Hours for which the national minimum wage must be paid:  
unmeasured work

### “Daily average” agreement of hours to be worked

195. This is a written agreement with the worker which must be agreed before the start of the pay reference period that it covers. The “daily average” agreement must:

- set out the average number of hours that the worker is likely to spend each day in doing the tasks assigned to him. This daily average number of hours must be a realistic average. If challenged, it is for the employer to prove that the number of hours is indeed realistic.

196. Details of the “daily average” agreement are set out below

#### Box 23: The “daily average” agreement

The agreement must:

- be agreed between the worker and the employer;
- be made before the start of the pay reference period that it covers;
- be in writing;
- set out the daily average number of hours which the worker is to work;
- ensure the daily average number of hours is realistic.

Note: one agreement can cover a number of pay reference periods if there is no change in the average number of hours.

### Calculating the hours of unmeasured work under a “daily average” agreement

197. To calculate the number of hours of unmeasured work done in the pay reference period (say, one week) when there is a “daily average” agreement:

- confirm the agreed daily average number of hours agreed per day (say, 5 hours a day) and the number of hours the worker is required to be available for work on a full working day (say, 12 hours);

- multiply the agreed daily average number by the number of days when the worker was in fact available for work for the full number of hours contemplated by the contract (say, 4 days): 5 hours x 4 days = 20 hours;
- If a worker is available for only part of a day, work out what fraction that is of the time he is normally required to be available and calculate his hours of work proportionately. So, in the example above where the worker is estimated to average 5 hours work in 12, if he was only available for 6 hours in a day it would count as  $2\frac{1}{2}$  hours work.

### **Travel time for people doing unmeasured work**

198. Someone doing unmeasured work must be paid at least the national minimum wage for time spent travelling in connection with the job. The rules on travel time generally are explained in paragraph 129. Such time must therefore be included in the “daily average” hours to be worked. It does not include time spent travelling between home and the place of work.

### **Paying the national minimum wage for every hour worked**

199. Unless a “daily average” agreement is reached between the employer and the worker, the employer must pay the worker the national minimum wage for every hour worked. The general record-keeping requirements apply (chapter 17), as does the reversal of the burden of proof, so an employer with no “daily average” agreement will still need to keep accurate information about the hours worked by his workers.

## Some general points to bear in mind

200. An employer of people doing unmeasured work should:

- decide an option for working out the hours of the worker: either the “daily average” agreement or paying for every hour claimed;
- if there is a “daily average” agreement, ensure this:
  - is in place before work begins at the start of each reference period;
  - states the “daily average” of hours to be worked;
  - is realistic.

## **15 Agricultural workers and the national minimum wage**

### **All agricultural workers must be paid at least the national minimum wage**

201. Agricultural workers must receive no less than the national minimum wage. At the same time, the existing agricultural minimum wage arrangements will continue to operate. Under the agricultural minimum wage, many agricultural workers will be entitled to higher rates of pay than the national minimum wage.

202. Disabled people who have an agricultural permit of exemption issued by an Agricultural Wages Committee must also receive at least the national minimum wage. Where a permit specifies a minimum rate that is above the national minimum wage, the higher rate will continue to apply.

### **Calculating whether an agricultural worker has received the national minimum wage**

203. In most cases, paying the agricultural minimum wage will also ensure that the national minimum wage has been paid. It is for employers to ensure that payment of the agricultural minimum also results in payment of at least the national minimum wage to individual workers.

204. Details of the minimum basic and overtime rates and of other terms and conditions that apply to agricultural workers are shown in the Agricultural Wages Orders made by the Agricultural Wages Boards. These details, as well as information on the application of the national minimum wage in agriculture, can be obtained from:

**In England and Wales:**

The Agricultural Wages Helpline –  
Telephone 0845 0000 134 (local call rates apply)

**In Scotland:**

The Agricultural Wages Helpline –  
Telephone Edinburgh 0131 244 6397

**In Northern Ireland:**

The Agricultural Wages Helpline –  
Telephone Belfast 02890 520838

# 16 Calculating the hourly rate of pay

## Summary of calculation method

205. The following is a general summary of how to calculate the hourly rate of a worker's pay so as to compare it with the rate of the national minimum wage. The individual chapters should be read for further detail. To calculate whether the national minimum wage has been paid, an employer or worker needs to:

### A. Calculate national minimum wage pay

- Check that the person is a worker who must be paid at least the national minimum wage (Chapters 2 and 3)
- Identify the worker's pay reference period by checking how frequently the worker is paid (Chapter 6)
- Check the worker's gross pay and identify what counts towards national minimum wage pay (Chapter 7)
- Subtract from gross pay anything that does not count towards national minimum wage pay (Chapter 8)
- Add back an amount for accommodation, if provided, up to the permitted limit (Chapter 9)
- The result should be the amount of national minimum wage pay which the worker has received in the pay reference period.

### B. Calculate the hours for which the national minimum wage must be paid

- Check what kind of work the worker has done in the pay reference period:
  - Time work (Chapter 11);

- salaried-hours work (Chapter 12);
- output work (Chapter 13);
- unmeasured work (Chapter 14);
- Identify and calculate in each case the hours that count. The calculation is different for each type of work as explained in Chapters 10–14;
- The result should be the number of hours for which the national minimum wage must be paid in the pay reference period.

### C. Obtain the worker's hourly rate of pay for comparison with the national minimum wage

- divide the amount of national minimum wage pay from A, by the number of hours from B;
- the result is the worker's hourly rate of pay that should be compared with the national minimum wage.

### D. Compare the worker's hourly rate with the appropriate rate of the national minimum wage

- Check against:
  - the rate for people aged 22 and above: £4.10 an hour;
  - the rate for people aged 18–21: £3.50 an hour;
  - the rate in the first six months of employment for those who do accredited training and are aged 22 and above: £3.50 an hour. In this case, check also whether there is a training agreement (Chapter 5).

## 17 Record-keeping requirements

### Who needs to keep records?

206. All employers must keep sufficient records to establish that they are paying their workers at least the national minimum wage. Employers who have a “training agreement” (paragraph 54), “fair estimate” agreement (paragraph 180) or “daily average” agreement (paragraph 195) with a worker must also keep a copy of the agreement.

### Why must records be kept?

207. The records need to be kept because they will help any worker, employer, enforcement officer, tribunal or court determine whether the national minimum wage has been paid. If there is a dispute, the burden is on the employer to prove that he has paid the national minimum wage to a worker.

208. If a worker has reasonable grounds to believe that he has not been paid the national minimum wage, he has the right to see the employer’s records which relate to him. To do so, he must make a written request to the employer and the employer must produce the records within 14 days.

209. An enforcement officer may also visit a company and ask to inspect the employer’s national minimum wage records or require them to be produced on reasonable notice.

210. It is a criminal offence if an employer fails to keep records, keeps false records or produces false records. It is also a criminal offence to refuse or prevent an officer from seeing these records.

### What records count as “sufficient” records?

211. The rules do not state what count as “sufficient” records. This was done to provide flexibility because the situation will vary from employer to employer and from worker to worker. It is left to the employer’s judgement in each case. However, employers should be aware that if a worker brings a claim for unpaid national minimum wage to a tribunal or court, the burden will be on the employer to prove that the national minimum wage has been paid. The employer is likely to need records to enable him to provide this proof. The following paragraphs provide some general advice which should help employers decide what type of national minimum wage records they should keep.

If an employer is unsure if he is keeping sufficient records he may wish to seek independent legal advice.

212. For a worker who is paid well above the national minimum wage, his employer’s existing pay records may be sufficient to show that the worker is in fact receiving the national minimum wage: for example, general pay records kept for tax or National Insurance purposes. Such records would normally show amounts paid to the worker and the period that the payments are intended to cover.

213. It is for the employer to judge when, for any particular worker, he should keep more detailed records specific to payment of the national minimum wage. The closer to the minimum a worker’s gross pay is, and the longer the worker works in a pay reference period, the greater the risk that the worker could be paid below the national minimum wage. The following comparative figures give an idea of how the hourly national minimum wage may convert into a daily, weekly, monthly or annual rate. They are intended only as a rough illustrative guide, because they do not exclude various pay elements such as allowances or benefits that do not count

towards national minimum wage pay; neither do they take account of extra hours:

- National minimum wage standard hourly rate: £4.10
- Daily amount if 8 hours a day: £32.80
- Weekly amount if 40 hours/week: £164.00
- Monthly amount (22 working days at 8 hours) £721.60
- Annual amount if 40 hours/week: £8,560.80  
(52.2 weeks/year)

214. If an employer wants to keep more detailed records, the extra information indicated in Box 24 could be kept about payments made to the worker and hours worked in a pay reference period:

Box 24: Examples of records that may count as "sufficient"

- gross pay paid to the worker, and the hours worked by the worker;
- overtime/shift premia;
- amount of unconsolidated allowances;
- any benefits received by the worker;
- any deduction or payment for accommodation;
- the amount of tips given to the worker through the payroll;
- Any "fair estimate" or "daily average" of hours to be worked, calculated as indicated in Chapters 10–13;
- any absences, for example, rest breaks, sick leave, holiday;
- any travel or training during work hours and its length;
- bank statements or other commercial documentation.

215. The above is not intended to be a definitive or comprehensive list. The details of records to be kept may differ from case to case and also according to the type of work being done.

### **Do the records need to be in any particular form?**

216. The records do not have to be kept in any particular form. They can be kept on paper or on computer, for example. But the employer must be able to produce them in a single document on request, whether from a worker or from an enforcement officer. A single document can be of any length.

### **How long do national minimum wage records need to be kept?**

217. The employer must keep records for a minimum of three years after the pay reference period following the pay period that the records cover. For example, if a person is paid each calendar month, his records for the month of May 1999 would have to be kept for three years from the end of June 1999.

218. Although the rules do not require employers to keep records for any longer than three years, employers should be aware that a worker can bring a civil case before a court for up to six years after an alleged failure to pay the national minimum wage. In such a case, it would be for the employer to prove that he had paid the national minimum wage.

## 18 Informing people about the national minimum wage

### Best-practice message

219. Employers may want to ensure that their staff know the basic facts about the national minimum wage. The more people know about the rules, the less the likelihood of confusion or of complaints being made for the wrong reasons.

220. This guidance is intended to help with increasing awareness of the national minimum wage and how it is calculated. In addition, employers may display basic information about the national minimum wage as a “best-practice” message. If you would like to order one or more posters like this (A4 size), please call 020 7215 6231. The posters are free. Note that this number will not answer general enquiries. We suggest a poster or statement for staff along the following lines:

#### Box 25: National minimum wage

As of 1 October 2001 the rates for the national minimum wage are:

For most workers aged 22 and over: £4.10 an hour

For workers aged 18 to 21 (inclusive)

and workers aged 22 and over, doing certain types of training in the first six months of a new job: £3.50 an hour

For more details of the rates, who is entitled to the national minimum wage and who is not, and other information, you can telephone the NMW helplines on 0845 6000 678 (local rates apply).

# 19 Enforcement

## Main means of enforcement

221. The main means of enforcement are summarised in the Table at the end of this Chapter. They are:

- access to national minimum wage records;
- the enforcement agency: Inland Revenue (and agricultural inspectors);
- claims by workers before tribunals and courts;
- other linked mechanisms.

## Access to national minimum wage records

222. If a worker believes he is entitled to the national minimum wage and is not getting paid the right amount, he can require the employer to show him his pay records (see Chapter 17). He must ask the employer in writing and can inspect and copy the records. The employer must produce the records within 14 days of the request (or within a time agreed between the employer and the worker). If a worker wants to inspect the records himself, he can be accompanied by another person of his own choosing.

223. If the employer refuses to let the worker see the records, or fails to produce the records, the worker can take a complaint to an employment tribunal. If the tribunal upholds the complaint it will require the employer to pay the worker £328 (80 times the level of the national minimum wage).

224. Officers of the Inland Revenue may ask to see an employer's records on national minimum wage pay. An employer who fails to keep records, or who keeps or produces false records, may be subject to criminal prosecution. He will

also be vulnerable in any dispute over actual pay and hours, since the burden of proving the minimum wage has been paid rests on him.

## The Inland Revenue minimum wage compliance officers

225. The enforcement agency for the national minimum wage is the Inland Revenue. Agricultural wages inspectors will enforce the national minimum wage in the agricultural sector as well as enforcing the agricultural minimum wage.

226. Compliance officers working for the agency must show a warrant or similar identity document on request. They have various powers to obtain information. They can, for example:

- require the employer or people working for him to produce and explain records about national minimum wage pay;
- enter the employer's premises in order to interview him;
- require an employer to attend for interview at the Inland Revenue's offices.

227. If an enforcement officer believes that an employer has failed to pay at least the national minimum wage to a worker:

- The officer may serve an enforcement notice which requires the employer to start paying the national minimum wage and to make good previous underpayments for each named worker. The employer may appeal against the enforcement notice.
- If the employer ignores the enforcement notice, the officer may serve a penalty notice. The penalty notice imposes a financial penalty on the employer of £8.20 for each day from the time the enforcement notice was

issued, and for each worker named in the enforcement notice who has not been paid the money due. The penalty notice does not recalculate the amount owed to the worker but penalises the employer for non-compliance with the notice. The original enforcement notice remains in force pending the outcome of any appeal by the employer. The employer may appeal against the penalty notice.

228. If the above steps do not result in the employer complying with the enforcement notice, the enforcement officer can:

- encourage the worker to take the employer to a tribunal or court to recover the money owed (if he has not already done so);
- take such a case on behalf of the worker;
- prosecute the employer. Deliberate refusal to pay the national minimum wage is a criminal offence (see also paragraph 234).

Deliberate refusal to pay the national minimum wage is a criminal offence (see also paragraph 234).

229. Enforcement officers can act in response to complaints by workers or others that an employer is not paying the national minimum wage. They can also decide to make inspections of employers at any time.

### **Claims by workers before tribunals and courts**

230. A worker can bring a claim before an employment tribunal to recover any money which he believes he is owed as a result of not receiving the national minimum wage. Alternatively, a worker can go to a civil court to recover the money due to him.

231. A worker may also claim unfair dismissal or victimisation if his employer sacks him or takes some other action against him for trying to ensure that he gets paid the national minimum wage, or simply because the worker is (or is going to become) eligible for the national minimum wage.

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**Example 32: Unfair dismissal because of the national minimum wage**

A worker is entitled to be paid the national minimum wage of £4.10 an hour, but is paid only £3.50 an hour. He makes a complaint to the helpline who then take up the case on his behalf. When the employer finds out about this, he sacks the worker. If the reason for dismissal can be shown to be because the worker complained, this would be unfair dismissal.

A 17-year-old worker is about to become 18. It would be against the law to dismiss him simply because he would become entitled to the national minimum wage at 18 years.

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232. In civil cases, the burden is on the employer to prove that he has paid the national minimum wage to the worker, rather than for the worker to prove that he has not received the national minimum wage.

233. Where a case is taken to an employment tribunal, a conciliation officer employed by the Advisory, Conciliation and Arbitration Service (ACAS) has a duty to seek to encourage a settlement.

### **Criminal offences**

234. There are six criminal offences relating to the national minimum wage, with fines up to a maximum of £5,000 for each offence. They are shown in the Table at the end of this Chapter.

Table: National minimum wage enforcement

**Record-keeping**

Requirement on employers to keep national minimum wage records

Workers have a right of access to records

Tribunal can award worker 80 x national minimum wage (£328) if access denied

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**Enforcement agency**

Enforcement agency is Inland Revenue

Enforcement officers have certain powers to obtain information

Enforcement officers can exchange certain information with agricultural wages inspectors

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**Enforcement action**

*By individuals*

Workers have a right to recover unpaid national minimum wage through employment tribunal or other civil court

*By enforcement officers*

Enforcement officers have power to issue enforcement notices to require employers to pay national minimum wage. If the enforcement notice is ignored, an officer has the power:

- to bring a case before a tribunal or court on behalf of the worker(s); and/or
- to impose a penalty on the employer: £8.20 per day, per worker, in respect of whom the employer is in breach

*Criminal offences and prosecution*

Six criminal offences

- refusal or wilful neglect to pay national minimum wage
- failing to keep national minimum wage records
- keeping false records

- producing false records or information
- intentionally obstructing an enforcement officer
- refusing or neglecting to give information to an enforcement officer

Fine for each offence: up to £5,000 (level five)

Enforcement officer(s) may be authorised to prosecute

### **Other enforcement mechanisms**

In civil cases the burden is on the employer to show that he has paid the national minimum wage

ACAS conciliation officers have a conciliation role in cases involving tribunals

The Secretary of State must publish information about the national minimum wage

## 20 Frequently asked questions

**Q: What are the rates of the national minimum wage?**

A: The general minimum level is £4.10 hour. This rate applies for pay reference periods following 1 October 2001 (£3.70 before this date).

If aged 18–21(inclusive), or older and doing accredited training, the rate is £3.50 an hour.

The 18–21 year old rate went up from £3.20 on 1 October 2001. The accredited training rate applies only for six months after starting a new job with a new employer and only then if the worker is party to an agreement in which he will get 26 days accredited training.

**Q: When did the national minimum wage first come into force?**

A: 1 April 1999.

**Q: Whom does it cover?**

A: Most workers who are aged 18 or over and are working under a contract of employment or other form of worker's contract. There are a few exceptions set out in the legislation.

**Q: Does it cover the self-employed?**

A: No, the genuinely self-employed are not “workers” under the definition. A self-employed person's pay will continue to depend upon agreeing a price for his work with the customer or client. However, there are some cases when it is not clear whether an individual is really self-employed

or whether he is working for some one else. In such cases, the “worker” and the “employer”; may wish to consult a legal expert.

**Q: What about company directors?**

A: A company director will not have to be paid the national minimum wage unless he has a workers’ contract. Because directors are recognised as ‘office holders’ in common law they are not likely to have ‘implied’ contracts. This is true no matter what kind of activities they carry out and however they are paid. If a company director is not sure whether he has a workers’ contract, he may wish to consult a legal adviser.

**Q: Are there any exemptions for part-time workers?**

A: No. All part-time workers must receive at least the national minimum wage.

**Q: Are casual workers, freelance workers, temporary workers and agency workers covered by the national minimum wage?**

A: Yes. All must receive the national minimum wage.

**Q: Are retired people and pensioners eligible for the national minimum wage?**

A: Yes. If they are workers.

**Q: Are there any exemptions for small businesses?**

A: There are no exemptions according to size of firm or business.

**Q: Who is exempted from the national minimum wage?**

A: The only workers who are exempted are members of the armed forces, share fishermen, voluntary workers, family members working in family businesses, individuals living and working as part of a family, students attending higher education courses requiring attendance for a period of work experience, members of religious communities and prisoners. There are also special rules for certain sorts of Government trainees.

**Q: Must volunteers be paid the national minimum wage?**

A: Volunteers (who provide their time and effort completely freely) need not be paid the national minimum wage because they are not classed as workers. But some people who consider themselves “volunteers” could still potentially count as “workers” because they receive some sort of payment or benefit in kind. These “voluntary workers” need not be paid the national minimum wage provided they work for a charity, voluntary organisation, school, hospital or similar body and they only receive reasonable expenses, relevant training or subsistence. Voluntary workers who are placed by a charity or similar body with another charity or similar body, may also receive money for subsistence without becoming entitled to the national minimum wage.

Some organisations may decide to award genuine “honoraria” to their volunteers in the form of a gift of a reasonable amount and with no obligation. This is not likely to give those individuals the right to the national minimum wage. However, regular payments are likely to indicate that an individual is a worker who has a right to the national minimum wage.

**Q: What about trainees and apprentices?**

A: Many Government-funded trainees will not count as workers, and so will not be covered. But those with employment contracts are entitled to the national minimum wage. There is a special rate for people receiving accredited training in the first six months of their job. Apprentices under 26 are exempt during the first year of their apprenticeship, or until they are 19 (if they started their apprenticeship before they were aged 18).

**Q: Are there any regional differences?**

A: There are no differences by region. The rates apply to all workers across the UK.

**Q: Can I call to report an employer paying less than the national minimum wage?**

A: Yes. The helpline on 0845 6000 678 takes complaints from workers, employers and third parties. All complaints will be treated as confidential. Anonymous complaints will also be processed (ask for the Code of Practice for more details).

**Q: Are piece workers covered by the national minimum wage?**

A: Piece workers must receive at least the national minimum wage for every hour worked or, if their employer has no control over the hours they work, they may come to an agreement with him about a fair estimate of hours.

**Q: Can I agree with my employer to be paid less than the national minimum wage if that means they can afford to keep me on?**

A: No. Your employer would be breaking the law.

**Q: How is it enforced?**

A: The Inland Revenue enforce the national minimum wage, apart from in the agricultural sector where it is enforced by agricultural wages inspectors. The national minimum wage helplines take complaints on 0845 6000 678. Complaints are passed to Inland Revenue Inspectors located in your region, who will follow them up with visits as appropriate. If you want to know more about enforcement, you should ask the Inland Revenue for the Code of Practice for Employers or the code of Practice for Workers on the national minimum wage.

A penalty notice, which is a civil fine, is worked out on the basis of £8.20 for each day an employer does not comply with an enforcement notice for each worker. But officers will give employers every chance to comply before considering any penalty.

The maximum penalty is a fine of £5,000 for committing a criminal offence. The National Minimum Wage Act makes it a criminal offence to refuse or wilfully neglect to pay the national minimum wage; to fail to keep national minimum wage records or to keep false records; and to obstruct an enforcement officer.

If you have checked the other pages under the national minimum wage including the Guide to the Regulations and have not found the answer to your question, please ring the NMW helpline (local call rates apply).

**Q: How can I find out more about the way the minimum wage rules apply to people working for therapeutic reasons?**

A: See paragraph 16 of this Guide (“disabled workers”). The Government have also prepared a special guidance note on this subject, ‘The Minimum Wage and Therapeutic Work’ in consultation with various representative bodies. This can be ordered from the DTI publications orderline, tel: 0870 1502 500 or email: dtipubs@eclogistics.co.uk

**Q: Can you help me work out the salaried hours calculation?**

A: The Government have developed an interactive website which includes a ready-reckoner for salaried hours workers, as well as ready-reckoners for time work and for the accommodation offset, and a decision tree to help you work through this guidance. This is available on **[www.tiger.gov.uk](http://www.tiger.gov.uk)**

**Q: My organisation employs ‘volunteers’ who receive various payments and benefits for the work they do. Do I have to pay them the minimum wage?**

A: The rules for voluntary workers are explained in paragraph 43. Many complicated arrangements exist in the voluntary sector and it is not always clear what the employment status of certain workers/volunteers will be. In the most difficult cases it may not be possible to give a clear answer without more case law from courts and employment appeal tribunals. Organisations which represent the voluntary sector (such as The National Council for Voluntary Organisations and the National

Centre for Volunteering) have produced guidance in this area. Organisations may also wish to take their own legal advice.

## 21 Further information and contacts

### National minimum wage enquiries

For assistance on the matters covered in this booklet, to register a complaint about under-payment of NMW or to order other guidance or leaflets, including those in ethnic minority languages, you should:

- call the NMW confidential helpline on **0845 6000 678** (local rates apply); or
- write to NMW Enquiries  
Freepost PHQ1  
Newcastle upon Tyne  
NE98 1ZH

If you simply want to order more copies of this guide:

- call the NMW Information Order Line on **0845 845 0360**

For further information about the national minimum wage:

- visit the DTI National Minimum Wage website at **[www.dti.gov.uk/er/nmw](http://www.dti.gov.uk/er/nmw)**  
or, **[www.tiger.gov.uk](http://www.tiger.gov.uk)**

*Please note that calls may be monitored or recorded in order to improve the quality of our service.*

## **Minority languages**

Short guides are available in Welsh.

Translations of the short guides are available in the following minority languages: Bengali, Gujarati, Punjabi, Hindi, Urdu, Chinese, Greek, Turkish, Somali, and Vietnamese.

Call 0870 1502 500 to order your short guide.

There is also a simultaneous translation service available at the Helpline (0845 6000 678).

## **Alternative format versions**

Short guides are also available in large print, Braille and on audio-cassette. Call 0845 602 4027.

## Agricultural minimum wage

For assistance on the agricultural minimum wage you should:

- in England and Wales, call the Agricultural Wages Helpline 0845 0000 134;
- in Scotland, call the Agricultural Wages Helpline 0131 244 6397;
- in Northern Ireland, call the Agricultural Wages Helpline 02890 520838.

## Accredited training

For further information about accredited training for the purposes of the national minimum wage you should contact:

- in England and Wales:  
William Blacklock  
Qualifications and Curriculum Authority  
83 Piccadilly  
London WYG 8QA  
Tel: 020 7509 5555
- in Scotland:  
The Scottish Qualifications Authority  
Hanover House  
24 Douglas Street  
Glasgow G2 7NQ  
Tel: 0141 242 2214
- in Northern Ireland:  
Training and Employment Agency  
Adelaide House  
39–49 Adelaide Street  
Belfast BT2 8FD  
Tel: 02890 257777

## Employment Tribunal Service

For information about employment tribunal procedures you should:

- call the Employment Tribunal Service enquiry line 0345 959775.

## Advisory, Conciliation and Arbitration Service

For information about employment law in general you should call your local ACAS public enquiry point:

Birmingham	0121 456 5856	Liverpool	0151 427 8881
Bristol	0117 946 9500	London	020 7396 5100
Cardiff	029 2076 1126	Manchester	0161 833 8585
Fleet	01252 811868	Newcastle	0191 261 2191
Glasgow	0141 204 2677	Nottingham	0115 969 3355
Leeds	0113 243 1371		

## Employment and Low Pay Units

Information on the NMW and other employment rights can also be obtained from:

West Midlands	0800 220 823
Scottish	0141 221 4491
Yorks. & Humberside	01924 443850

## The Stationery Office Ltd

Copies of the *National Minimum Wage Act 1998*, *National Minimum Wage Regulations 1999* and related legislation are available from The Stationery Office Parliamentary hotline, tel: 0345 023474.

Copies of the Low Pay Commission's reports can be obtained from The Stationery Office via its Publication Centre tel: 0870 600 5522.

**CHART OF NATIONAL MINIMUM WAGE RATES AND THE ACCOMMODATION OFFSET RATES SINCE ITS INCEPTION ON 1 APRIL 1999**

	<b>Main Rate (Workers aged 22+)</b>	<b>Development Rate (Workers aged 18-21)</b>	<b>Development Rate (Workers aged 22+)</b>
<b>1 April 1999</b>	£3.60 per hour	£3.00 per hour	£3.20 per hour *
<b>1 June 2000</b>	£3.60	£3.20	£3.20 *
<b>1 October 2000</b>	£3.70	£3.20	£3.20 *
<b>1 October 2001</b>	£4.10	£3.50	£3.50 *
<b>1 October 2002</b>	£4.20 **	£3.60 **	£3.60 **
<p>* starting a new job with a new employer and doing accredited training.  ** these increases have not been verified and are subject to the economic conditions at the time.</p>			
<b>Accommodation Offset</b>			
	<b>Per Hour</b>	<b>Per Day</b>	<b>Weekly Maximum</b>
<b>1 April 1999</b>	50p	£2.85	£19.95
<b>1 October 2001</b>	57p	£3.25	£22.75



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